

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

FEDERAL EMERGENCY MANAGEMENT
AGENCY, HEADQUARTERS,
WASHINGTON, D.C.

Respondent

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 4060, AFL-CIO

Charging Party

Case No. WA-CA-20467

Jerome P. Hardiman
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Counsel for the General Counsel

Leo V. Bosner
Representative of the Charging Party

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), from about February 21 through March 31, 1992 by refusing to recognize the Charging Party (Local 4060) and by refusing to negotiate in good faith with Local 4060 on a number of specific matters during the period.

Respondent's answer denied that Local 4060 was an agent of the certified exclusive representative for the bargaining unit during the period and denied that it had committed any unfair labor practice in violation of the Statute.

A hearing was held in Washington, D.C. The Respondent, Charging Party, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs, and the proposed findings have been adopted where found supported by the record as a whole. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

Leo V. Bosner has been an Emergency Management Specialist with the Respondent since 1979. In early September 1991, Bosner approached representatives of the American Federation of Government Employees, AFL-CIO (AFGE) about organizing a union at Respondent's Headquarters. With the assistance of AFGE's Charles Mintess, an organizer from AFGE's national headquarters, Bosner began an organizing drive at Respondent's Headquarters along with several coworkers which included distributing flyers in front of the building as well as a petition drive for signatures for the certification election. This organizing drive lasted from the middle of September 1991 until the middle of November 1991.

A petition for an election was filed with the Washington Regional Office of the Federal Labor Relations Authority (FLRA) in late November/early December 1991. Subsequent to the filing of this petition, Bosner, along with AFGE National Organizer Charles Mintess, met with Donald MacIntyre, Respondent's Labor Relations Officer, and Thomas Ainora, an attorney with Respondent's office of General Counsel, at the Washington Regional Office of the FLRA on several occasions for the purpose of obtaining a consent agreement for an election at Respondent. Mr. Mintess signed the consent agreement forms. During these meetings, both MacIntyre and Ainora were aware that Bosner was attending the meeting on behalf of the AFGE as the employee representative of the unionization drive. In this regard, Bosner was involved in negotiating the election details, e.g. time, date and place, and acted as the Union's point of contact, at the request of the FLRA, for the employee absentee ballot procedure and in appointing designated employee election observers for the Union.

On February 11, 1992, the FLRA conducted a secret ballot election at Respondent. The AFGE was selected as the exclusive representative.

Following the election, Mr. Mintess, AFGE organizer, met with Mr. Bosner and the ad hoc organizing committee. The committee named Mr. Bosner Acting President and selected other acting officers. Mr. Mintess advised Bosner that their new Local would be designated as AFGE, Local 4060, and he could act for the Local and for unit employees.

On February 21, 1992, the Regional Director of the Washington Regional Office of the FLRA issued a "Certification of Representative" for the "American Federation of Government Employees, AFL-CIO" as the exclusive representative of a unit of professional and nonprofessional employees of Respondent's Headquarters appropriate for collective bargaining. Mr. MacIntyre, Respondent's Labor Relations Officer, received the document on February 24, 1992. By letter dated February 21, 1992, Mr. Bosner wrote to the Director of Respondent. Mr. Bosner, writing as "Acting President, Local 4060, AFGE" on AFGE stationery, requested bargaining on the implementation of a compressed work schedule pilot program, which was scheduled to begin on February 23, 1992. (See paragraph 12(a) of complaint.)

By letter dated February 24, 1992, Respondent, by Mr. MacIntyre, advised Mr. Bosner, in part, as follows:

We cannot enter into negotiations as you have requested for the following reasons:

- 1) The certification, which we received today, identifies the American Federation of Government Employees (AFGE) as the exclusive representative, the same organization named on the petition and the official ballot.
- 2) We cannot recognize you or any other person as a representative of the bargaining unit without a delegation of authority from an appropriate official of the AFGE.

In the spirit of cooperation, we have been in communication with the principal AFGE representative, Mr. Charles Mintess, to plan an orderly transition from a non-unionized to a unionized work place. Your communication of February 21 is inconsistent with the plans being discussed with this representative.

....

Since your communication was on AFGE national office stationary (sic) and you presented yourself as the spokesperson for the bargaining unit, we are sending copies of your correspondence, and this reply, to the National President of AFGE and other appropriate AFGE officials.

The letter indicated that copies were sent to John Sturdivant, AFGE National President, Charles Mintess, AFGE National Organizer, and Harry Rager, AFGE National Representative.

Upon receipt of this letter, Mr. Bosner contacted AFGE Representatives Charles Mintess and Harry Rager for advice. Bosner was informed that the delegation was a formal paper that AFGE had to submit to the Agency and a meeting would immediately be set up for that purpose.

A meeting was arranged by Mr. Mintess and Mr. MacIntyre for February 26, 1992 for the purposes of introducing the designated acting officers of Local 4060 to management and delivering to management a written delegation of authority or other authorization for the Local to act as agent for the certified exclusive representative. Mr. Bosner did not have any role in determining the agenda for the meeting.

On February 26, 1992, a meeting was held at the Respondent's headquarters. In attendance at that meeting were Mr. Mintess, Mr. Harry Rager (the National Representative from AFGE's 14th District office) three of the acting officers of AFGE Local 4060 including Acting President Bosner, Mr. MacIntyre, and Mr. Barry Socks (the Agency's Director of Employee and Labor Relations). The meeting was brief and lasted only about ten minutes.

After introductions among those present, a letter was presented to Mr. MacIntyre. The letter, dated February 25, 1992, was addressed to the Director of the Agency and signed by David Schlein, the National Vice President of AFGE's District 14. The letter provided in pertinent part:

This is to inform you that our recently certified unit in the FEMA headquarters (WA-RO-20003) will be identified as AFGE Local 4060, and the temporary officers are as follows:

President - Leo Bosner

...

National Representative Harry Rager has been appointed to service this local and is the 14th District point of contact in matters concerning the local.

We are looking forward to our future dealings with your agency and want to meet your designee to negotiate a dues-withholding agreement as soon as possible.

Mr. MacIntyre read the letter to those at the meeting and informed them that it did not provide what he had expected, based upon assurances he had received from Mr. Mintiss in their conversations. That is, the letter did not delegate any authority from the certified exclusive representative, AFGE, AFL-CIO, to Local 4060 or otherwise authorize anyone to act as an agent for the exclusive representative. Mr. MacIntyre interpreted the letter essentially as doing nothing more than informing the Agency that AFGE had established a local within its 14th District for the new bargaining unit and designated the local as Local 4060; identifying the temporary officers of the new local and the servicing national representative from District 14; and expressing an interest in negotiating a dues withholding agreement.

Mr. Bosner then asked Mr. MacIntyre to explain the problem since he was new to labor-management relations. When Mr. MacIntyre attempted to do so, Mr. Rager interrupted and made it clear he did not want Mr. MacIntyre to continue his explanation. The meeting ended when the Union representatives left, indicating that they would take the matter to the Director of the Agency. The Union representatives unsuccessfully attempted to meet with the Respondent's Director.

On February 26, February 28, March 4, and March 12, 1992, Mr. Bosner wrote Respondent's Director requesting negotiations on behalf of AFGE concerning a variety of matters. These matters included a proposed reorganization of Respondent's Office of Financial Management (see paragraph 12(b) of complaint), proposed changes in Respondent's grievance process (see paragraph 12(c) of complaint*), and a relocation of some Agency employees (see paragraph 12(d) of complaint). Each of

*/ The Respondent's amendment of its administrative grievance procedure was in an early draft stage at that time, had not been reviewed and approved, and was not implemented during the time period covered by the complaint.

the letters requested Respondent to fulfill its bargaining obligations before implementing the proposed changes.

At about the same time, Respondent was notifying Mr. John Sturdivant, National President, AFGE of pending changes in conditions of employment. By letters and memoranda during the period March 4 to March 16, 1992, Mr. Sturdivant was informed of proposals relating to reassignment of offices, relocation of employees (see paragraph 12(d)-(f) of complaint), a no-smoking policy (see paragraph 12(g) of complaint -- withdrawn at Tr. 79), reorganization of Respondent's Office of Financial Management (see paragraph 12(b) of complaint), an employee notice regarding priority repromotion consideration, and consolidation of basic ADP planning and operations (see paragraph 12(h) of complaint).

The notifications, which were transmitted to Mr. Sturdivant by facsimile, advised him to contact Mr. MacIntyre if he had any concerns about any of the changes described, and provided periods ranging from less than 48 hours to seven days for a response. Neither Mr. Sturdivant nor anyone on his national office staff responded to any of the notices from Mr. MacIntyre, nor did anyone advise him, prior to March 17, to notify anyone other than Mr. Sturdivant about changes in conditions of employment.

In the first of his notifications, a letter of March 4, 1992, Mr. MacIntyre also informed the AFGE National President:

As you are aware, the American Federation of Government Employees (AFGE) was recently certified as the exclusive representative of 401 employees assigned to the headquarters of the . . . Agency. We have been advised by the National Vice President of District 14 that Local 4060 has been chartered for this bargaining unit and have been provided the names of the temporary officers. We had anticipated that your office would delegate labor-management relations authority and responsibility to the temporary officers, but no such document has been forthcoming.

There are a number of items we need to discuss with you or your authorized agent concerning changes in conditions of employment. . . .

Mr. MacIntyre also made a number of other efforts to resolve the question of the authority of Mr. Bosner and Local 4060 to act for the exclusive representative and to obtain the authorization from AFGE. Among his efforts,

Mr. MacIntyre contacted Mr. Brian DeWynnngart, Assistant to the National President of AFGE, on March 4, explained the situation to him, and asked for a delegation of authority.

Mr. MacIntyre also responded to Mr. Bosner's bargaining requests of February 26, February 28, and March 4, 1992 by letter of March 11, 1992. In that letter, Mr. MacIntyre advised Mr. Bosner, in part:

As you are aware, we have been awaiting an appropriate delegation of authority from the National President of AFGE, or his designee, authorizing you to represent the AFGE/FEMA headquarters bargaining unit. We were discussing this very subject at our meeting on February 26 when you and the other members of the union's delegation decided to unilaterally adjourn the meeting prior to a complete discussion of this and others (sic) matters. As of this date, no such authorization has been received from you or the union's National Office.

Although you provided the Director with a letter signed by David Schlein, National Vice President, AFGE, District 14, of February 25, 1992, the letter does not delegate to you or to Local 4060 the authority to represent the AFGE/FEMA headquarters bargaining unit.

Mr. Schlien (sic) states that the bargaining unit will be "identified as AFGE Local 4060". The "identification" of a certified bargaining unit cannot be changed/amended unilaterally by the union. (See 5 CFR Chapter XIV, Part 2422, Subpart 2422.1(d). The union may, at its discretion, delegate authority to its representative(s) of choice. Had the unit been certified to AFGE Local 4060, Mr. Schlien's (sic) letter, indicating that you are the Acting President, would have been sufficient for us to have formal dealings with you. However, in our case the certification was neither petitioned for Local 4060 or granted to Local 4060.

The Certification of Representative was issued to the American Federation of Government Employees, AFL-CIO. We are obligated to deal with the exclusive representative (sic) of record.

Included with the AFGE petition for the headquarters bargaining unit was a copy of the AFGE Constitution.

In Article IX, the AFGE Constitution states that the National President shall function as the Chief Executive Officer of the Federation and shall exercise supervision of the affairs of the Federation subject to the approval of the National Executive Council. Article XIV requires new locals chartered after January 1, 1985, to be governed by the Standard Local Constitution found at Appendix B. Section 3 of Article II of the Standard Local Constitution states the following:

"This local is a separate, independent organization functioning in conformance with the AFGE's National Constitution. Neither the local nor its officers, employees, members or other persons has the authority to act, nor shall it be deemed to act on behalf of or as agent for the Federation or any of its other affiliates, unless such authority as applicable is expressly granted by the Federation by written authorization of the National President, or by an affiliate by written authorization in accordance with its governing procedures."

Your concern about your inability to deal directly with this agency should be directed to AFGE's National President, not to the Director of the Federal Emergency Management Agency. As stated in the AFGE Constitution the AFGE National President has authority to correct this matter. National President Sturdivant may issue a letter to you indicating your authority to represent the bargaining unit. If you receive such a letter, by simply providing us with a copy, the present impasse will be resolved to the satisfaction of all parties.

Until such time as we are advised that you have been delegated the necessary authority to handle labor-management relations matters for the AFGE/FEMA headquarters bargaining unit, or an Amendment to the Certification has been issued by the Federal Labor Relations Authority, designating AFGE Local 4060 as the exclusive representative, it will be necessary to withhold any formal dealings with you. In the meantime, we are communicating with the AFGE National President concerning all appropriate matters related to the bargaining unit in accordance with the AFGE Constitution and the Certification of Representative.

The letter indicated that Mr. MacIntyre sent copies of his letter to Mr. Bosner to AFGE National President Sturdivant, National Vice President, District 14, David J. Schlein, and to National Representative Harry Rager.

On March 12, 1992, AFGE's National President John Sturdivant wrote to Mr. MacIntyre to inform him that "National Vice-President Schlein is acting as AFGE's agent in all matters relative to the new FEMA unit. He may re-delegate any or all collective bargaining and representational responsibilities to other individuals or local representatives." This letter was received by MacIntyre on March 17, 1992. Between March 17 and March 31, 1992 Respondent dealt with Mr. Schlein pursuant to President Sturdivant's delegation.

On March 24, 1992, AFGE National Vice President Schlein wrote to Mr. MacIntyre delegating his bargaining authority to Mr. Bosner. Mr. Schlein stated:

This is to inform you that AFGE Local 4060 has full authority to negotiate on behalf of the employees at the Federal Emergency Management Agency.

At the present time, Leo Bosner is Acting President of Local 4060 and has full authority to act on behalf of employees covered by the recognition. In addition, Mr. Bosner is free to appoint additional representatives he chooses to assist the Local in these matters. As is customary, he may also be assisted by any representative of the AFGE 14th District Office or the AFGE National Headquarters should he choose to have them provide representation.

If this delegation of authority is unclear, or if you have any additional questions, please feel free to call Mr. Harry Rager, National Representative, 14th District, (202) 639-6447.

Mr. Schlein's letter was signed by his secretary, postmarked on March 30, and received by Mr. MacIntyre on March 31, 1992. Upon receipt of the notification of the redelegation of authority from Mr. Schlein, the Agency established relations with Mr. Bosner, Acting President of Local 4060, as the duly authorized agent of the exclusive representative. In that regard, the Agency has negotiated agreements on various matters with Local 4060 since March 31, 1992, including a Memorandum of Understanding, signed April 7, 1992, on a compressed work schedule program. The matter was negotiated

with an officer of Local 4060 to whom Mr. Bosner had delegated authority.

Discussion and Conclusions

Section 7103(a)(12) of the Statute provides, in part:

'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees[.]

Section 7114(a)(1) of the Statute provides, in part:

A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit.

Section 7114(a)(4) provides, in part:

Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purpose of arriving at a collective bargaining agreement.

Section 7114(b) provides, in part:

The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--

. . .

(2) to be represented at the negotiations by duly authorized representatives[.]

The Authority has long held that "it is within the discretion of both agency management and labor organizations holding exclusive recognition to designate their respective representatives when fulfilling their responsibilities under the Statute." American Federation of Government Employees,

AFL-CIO, 4 FLRA 272, 274 (1980). Accordingly, an agency's failure to recognize and bargain with the duly authorized representative of the exclusive representative would violate section 7116(a)(1) and (5) of the Statute. See Federal Aviation Administration, Washington, D.C., 17 FLRA 142 (1985). On the other hand, where the level of recognition is at the national level, an agency does not commit an unfair labor practice by refusing to negotiate with the president of a union local where it has not been shown that any authority has been delegated to the local. Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 39 FLRA 1409, 1417-18 (1991) (Ogden).

The principle issue for determination here is whether Leo Bosner, Acting President of AFGE Local 4060, was a "duly authorized representative" of the exclusive representative for the purpose of initiating bargaining at the level of exclusive recognition from about February 21 through March 31, 1992. I agree with Respondent that it was never appropriately informed or otherwise on notice that Bosner or Local 4060 had been delegated bargaining authority during this period.

As the Respondent points out, the labor organization that petitioned for recognition, was on the ballot, elected by the unit employees, and certified by the FLRA as the exclusive representative of the Agency's headquarters bargaining unit was the "American Federation of Government Employees, AFL-CIO," not "AFGE, District 14" or "AFGE, Local 4060." Since the exclusive recognition is at the national level, the Statute, in the absence of an agreement between the parties, or other appropriate delegation of authority, does not require negotiations at any other level. See, e.g., Department of Health and Human Services, Social Security Administration, 6 FLRA 202 (1981); Department of Defense Dependents Schools and Overseas Education Association, 12 FLRA 52, 53 (1983); Ogden, 39 FLRA at 1417. An agency faces serious sanctions for failing or refusing to negotiate with the exclusive representative. See Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 16 FLRA 674 (1984). (Agency violated Statute where it attempted to negotiate change in working conditions with local union official, on the basis of confusing and arguable delegations, and failed to notify the national union, the exclusive representative.)

Because an agency faces unfair labor practice charges for failing or refusing to notify and bargain with a duly authorized representative of the exclusive representative, it follows as a matter of law and fundamental fairness that an

agency is entitled to a clear notification of any delegation of authority an exclusive representative may make. In other words, the burden must be on the exclusive representative to clearly inform an agency of any relevant delegation, i.e., what organization or individuals are authorized to act as its agent or representative and the scope of their authority.

As the record demonstrates, Respondent's position in insisting on a clear delegation of authority is supported by the constitution of AFGE. Under Article XIV and Appendix B of the Constitution, applicable to AFGE Local 4060, neither the Local nor any of its officers, including Mr. Bosner, had any authority to act on behalf of, or as an agent for, the AFGE unless such authorization was expressly granted in writing by the National President or by an affiliate in accordance with its governing procedures.

Similar to the circumstances present in Ogden, 39 FLRA at 1418, it was never communicated to Respondent, prior to March 31, 1992, that a delegation had been made by the exclusive representative to Bosner or Local 4060. Mr. Bosner's active and open participation in the organizing and election activities in the bargaining unit did not confer any actual or apparent authority on Mr. Bosner to bargain after the election on behalf of the exclusive representative certified at the national level. Mr. Bosner's letter of February 21, 1992, although written on AFGE stationery, did not proffer any such delegation and he sought bargaining as "Acting President, Local 4060."

National Vice President Schlein's letter dated February 25, 1992 was confusing. It "identified" Local 4060 as "our recent certified unit," named the temporary officers, stated that the 14th District was "the point of contact in matters concerning the local," and expressed an interest in meeting to negotiate a dues-withholding agreement, but did not state who would be negotiating such an agreement for the Union. The letter was far from a clear delegation of authority from the national office to AFGE, Local 4060 or to Mr. Bosner.

Although the letter was delivered by Mr. Mintess, an AFGE organizer, and Mr. Rager, AFGE National Representative, 14th District, it is clear from the record that they had no real or apparent authority to authorize the temporary officers of Local 4060 to act as agents for the exclusive representative, nor, given the limited nature of their responsibilities and the absence of any express delegation to them, were they the appropriate officials to be notified of changes in the conditions of employment of the employees in the bargaining unit.

The conduct of Mr. Rager at the meeting on February 26 was also counterproductive in addressing and resolving the delegation problem. Instead of allowing Mr. MacIntyre to explain his problems with Mr. Schlein's letter and attempting to work out a solution, Mr. Rager interrupted Mr. MacIntyre and precipitated the departure of the Union participants.

It is also apparent from the record that Respondent was not sitting back and relying on a mere technicality in failing to deal with Local 4060, Mr. Bosner, or other representatives of AFGE during the period. Rather, Mr. MacIntyre promptly advised Mr. Bosner, AFGE National President Sturdivant, AFGE National Organizer Mintess, AFGE National Representative Rager, and AFGE Assistant to the National President Brian DeWynngart, among others, of the delegation problem in an effort to get it resolved. Respondent's prudent action was justified by the Statute, precedent, and its past experience. It has other certifications running to AFGE Locals and AFGE Districts and has lost time and money in the past when it relied on asserted delegations of power which were not supported by clear and express notifications.

The record reflects that the authority to act for the exclusive representative was not delegated to Local 4060 and the Acting President of Local 4060 until Mr. Schlein did so by letter of March 24, 1992, which letter was not mailed until March 30 or received by the Agency until March 31, 1992. Therefore, contrary to the allegations in paragraphs 11, 12 and 13 of the complaint, Respondent acted in full accord with the Statute and properly declined to recognize and negotiate with Mr. Bosner until March 31, 1992, when the Agency received Mr. Schlein's authorization to Local 4060 and Mr. Bosner.

Since Mr. Bosner was without any authority to act on behalf of the exclusive representative and represent the unit employees during the period covered by the complaint, the Agency properly declined to bargain with him on the various bargaining requests he submitted between February 21 and March 12, 1992, which are the subject of paragraphs 12(a) through (d) of the complaint in this case.

Moreover, Mr. Bosner was not entitled to notice of the pending changes in conditions of employment of employees in the headquarters bargaining unit until March 31, 1992. Respondent properly fulfilled its duty under the Statute in the situations covered by paragraphs 12(e), (f) and (h) of the complaint by notifying the exclusive representative and affording the exclusive representative the opportunity to initiate bargaining on the matters involved. When the exclusive representative did not respond to any of the

Respondent's notifications, the Agency was within its rights under the Statute to implement the changes involved. General Services Administration, 15 FLRA 22 (1984).

Based on the foregoing findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

The complaint is dismissed.

Issued, Washington, DC, November 18, 1993


GARVIN LEE OLIVER
Administrative Law Judge