

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

DEFENSE DISTRIBUTION REGION
CENTRAL, F/K/A DEFENSE DEPOT
MEMPHIS, MEMPHIS, TENNESSEE

Respondent

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 2501

Charging Party

Case No. 4-CA-10781

Richard S. Jones, Esquire
For the General Counsel

Emma Cole, Esquire
For the Respondent

Nathaniel D. Boyd, Sr.
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 July 19, 1991, by American Federation of Government Employees, Local 2501, (hereinafter called the Union), against Defense Distribution Region Central, F/K/A Defense Depot Memphis, Memphis, Tennessee, (hereinafter called the Respondent), a Complaint and Notice of Hearing was issued on October 16, 1991, by the Regional Director for the Atlanta, Georgia Regional Office, Federal

Labor Relations Authority. The Complaint, which was subsequently amended on November 13, 1991, alleges that Respondent violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter call the Statute), by unilaterally implementing a new procedure for selecting volunteers for details without first giving the Union timely notice and an opportunity to bargain over the substance, impact and manner of implementation of the change.

A hearing was held in the captioned matter on March 31, 1993, in Memphis, Tennessee. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issue involved herein. Counsel for the General Counsel and Counsel for the Respondent submitted post hearing briefs on April 29 and 30, respectively, which have been fully 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 DLA Council of AFGE Locals (AFGE) is the exclusive representative of a unit of Respondent's employees appropriate for collective bargaining. The Union is an agent of AFGE for purposes of representing the unit employees at Respondent's Memphis, Tennessee installation. Although the Union and the Respondent are parties to a collective bargaining agreement, such agreement is admittedly silent with respect to the subject matter of the instant complaint.

Around June of 1991, Respondent decided to detail a number of employees to a newly established project called the Process Action Team. The Respondent asked for volunteers for the detail. While the selection for the detail was pending, a rumor began circulating that the person to be selected from Building 489 for the Process Action Team had already been determined without regard to seniority status.^{1/}

^{1/} As will be discussed infra, the Union maintains that it had always been the practice of Respondent to fill details from the volunteers. When the volunteers outnumbered the available openings on the detail, the selection was then made on the basis of highest seniority. In the event that the openings on the detail exceeded the number of volunteers, then the remaining openings on the detail were filled from non-volunteers having the lowest seniority standing.

Upon receiving complaints from several employees about the rumored method of selection to be utilized by Respondent, Union President Nathaniel Boyd met with Supervisor Robert Scales to discuss the matter. According to Mr. Boyd, Mr. Scales acknowledged that Respondent had always utilized seniority with respect to details and agreed to prepare a list by seniority and choose the person to be detailed from such list. Further, according to Mr. Boyd, Mr. Scales did subsequently prepare the promised list, but by the time it was finally prepared the volunteers had become disgusted with the way the selection was being handled and took their names off the list. As a result, the Respondent selected an employee from another work area for the detail.^{2/}

Union President Boyd, who has been employed by Respondent since 1978, further testified that it had always been Respondent's practice when searching for employees to work on a detail to ask for volunteers. If there was a shortage of volunteers the Respondent would select employees from the unit by inverse order of seniority. If it turned out that there were more volunteers than openings the Respondent would select employees in order of seniority. According to Mr. Boyd he was selected for a detail several years earlier solely on the basis of his seniority when it turned out that there were more volunteers than openings on the detail. Finally, according to Mr. Boyd, the first notice that the Union had that Respondent was deviating from its past practice with respect to utilizing seniority when the volunteers exceeded the vacancies on a detail was when he was approached by several disgruntled employees and told about the rumored pre-selection for the detail.

Union President Boyd's testimony with respect to the use of volunteers to fill vacancies based upon their respective

^{2/} Mr Scales admits preparing a list of volunteers without respect to their seniority standing. However, on cross-examination he acknowledged that the two employees appearing on the top of the list possessed the highest seniority. Mr. Scales attributes the employees standing on the list to mere coincidence. He further testified that during the discussion with Mr. Boyd about the detail he took the position that the vacancy should not have been filled by volunteers since all the employees volunteering from Building 489 held a WG5 and the job that they would be detailed to involved checking the work of another group of employees who also held a WG5 classification. Finally, Mr. Scales testified that in selecting a man for a detail he would use the first man that volunteered irrespective of his seniority standing.

seniority standing was corroborated by unit employees Alfred Todd, Brown Thomas and Claudia Branch, who have been employed by Respondent for approximately 9, 30, and 27 years, respectively. Thus, they all testified that it had always been Respondent's practice to fill details on the basis of volunteers and their respective seniority. They each gave examples of details that they had volunteered for, and had been selected for solely on the basis of their respective seniority standing.

Mr. Alfred Todd, the individual who would have been selected for the detail if seniority had been followed, submitted an inquiry to Respondent's "hotline" on July 1, 1991, wherein he questioned Respondent's action in not utilizing seniority for purposes of selecting employees for the detail. His inquiry was answered by Captain H.L. Kennedy, Respondent's Directorate of Distribution Director. The response from Mr. Kennedy reads in pertinent part as follows:

The investigation revealed that Division One has an internal requirement to conduct quality checks within the warehousing and packing operations to identify defaults and recommend corrective actions. Since Division One has no positions for auditors and the action is of a temporary nature, the use of assigned personnel is required. The appropriate mechanism to accomplish this task is the use of a detail. There is some training required for this work, but it is not considered to be of a nature to give anyone receiving training an advantage over the other employees. As such, there is no requirement to make selections based on employee seniority.

Respondent presented seven witnesses in support of its position, i.e. that it was not the practice to select employees for details based upon the seniority of the volunteers when there were more volunteers than openings on the detail.^{3/}

Mr. Lloyd the Personnel Officer, Mr. Jake Mangrum a Branch Chief, Lt. Colonel David Weaver the Division Chief, and Mr. Henry Harris the Deputy Division Chief, all testified to what they believed was, or should be, the practice with respect to filling details. For the most part these witnesses

^{3/} Ms. Rosseta Walker, Mr. Robert Scales, Mr. Ernest Lloyd, Mr. Otha Owens, Mr. Jake Mangrum, Mr. David Weaver and Mr. Henry Harris.

offered no probative evidence concerning how employees were actually selected for details.

Mr. Otha Owens, a Material Handler Foreman, testified that he never used seniority as the basis for selecting an employee for detail. When the volunteers exceeded the number of positions available on the detail he would select the first employees that had volunteered. Although he made a list of the volunteers, he merely listed them in the order that they raised their hand, and not seniority.

Ms. Rosetta Walker, a Supervisory Distribution Specialist, testified that both before and after becoming a supervisor she had no knowledge whatsoever of any employee being selected for a detail on the basis of seniority. On those occasions when the number of volunteers exceeded the number of vacancies on the detail, management made the selection for the detail without reference to seniority.

Discussion and Conclusions

The General Counsel takes the position that Respondent violated Sections 7116(a)(1) and (5) of the Statute by changing the manner in which it fills details without first giving the Union prior notice and an opportunity to bargain over the substance, impact and manner of its decision.

Respondent, on the other hand, takes the position that it never used seniority for the purpose of selecting an employee to fill a detail.

Inasmuch as each party has for the most part attempted to establish its position solely on the basis of record testimony rather than documentary evidence, it is obvious that a credibility determination is in order. In this connection, having observed the witnesses and their demeanor while on the witness stand and analyzed their respective testimony, I credit the mutually corroborative testimony of Mr. Boyd, Mr. Thomas, Mr. Todd and Ms. Branch to the effect that seniority was always used to fill details when the number of volunteers exceeded the number of positions on the detail.^{4/}

^{4/} In contrast, I found the testimony of Respondent's witnesses to be inconsistent and, for the most part, lacking in first hand knowledge with respect to how selections for details were actually made. In fact, one supervisor was of the opinion that he lacked the power to assign a non-volunteer employee to a detail when the number of vacancies on the detail exceeded the number of volunteers.

Accordingly, I find that Respondent's action in failing to utilize seniority for the selection of employees who had volunteered to be detailed to the Process Action Team constituted a unilateral change in a condition of employment. I further find that since such action was taken without affording the Union the opportunity to bargain over the substance, impact and manner of implementation, Respondent violated Sections 7116(a)(1) and (5) of the Statute.^{5/}

Having concluded that Respondent violated Sections 7116(a)(1) and (5) of the Statute, it is hereby recommended that the Authority issue the following Order designed to effectuate the purposes and policies 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, the Defense Distribution Region Central, F/K/A Defense Depot Memphis, Memphis, Tennessee shall:

1. Cease and desist from:

(a) Instituting a change in the manner in which volunteers are selected for details without first giving the American Federation of Government Employees, Local 2501, the exclusive representative of certain of its employees, prior notice of the change and the opportunity to bargain over the substance, impact and manner of implementation of the change.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the 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) Upon the request of the American Federation of Government Employees, Local 2501, AFL-CIO, the exclusive representative of certain of its employees, rescind the change in the manner in which volunteers are currently selected for details and reinstitute the past practice of selecting


^{5/} In reaching this conclusion it is assumed, since there is no evidence or contention to the contrary, that the volunteers possessed the necessary qualifications for the jobs on the detail.

volunteers for details on the basis of their respective seniority.

(b) Post at its facilities in Memphis, Tennessee, 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 Commander of the Defense Distribution Region Central, F/K/A Defense Depot Memphis, Memphis, Tennessee, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority in writing within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, November 29, 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 institute a change in the manner in which qualified volunteers are selected for details without first giving the American Federation of Government Employees, Local 2501, the exclusive representative of certain of our employees, prior notice of the change and the opportunity to bargain over the substance, impact and manner of the implementation of the change.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL upon request of the American Federation of Government Employees, Local 2501, the exclusive representative of certain of our employees, rescind the change in the manner in which qualified volunteers are currently selected for details and reinstitute the past practice of selecting volunteers for details on the basis of their respective seniority.

WE WILL notify the American Federation of Government Employees, Local 2501, the exclusive representative of certain of our employees, of any intention to change the manner in which qualified volunteers are selected for details and, upon request, negotiate to the extent consonant with law and regulation.

(Activity)

Date: _____

By: _____

(Signature)

(Title)

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 questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102 and whose telephone number is: (404) 347-2324.