

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

U.S. ENVIRONMENTAL PROTECTION
AGENCY, ENVIRONMENTAL RESEARCH
LABORATORY, NARRAGANSETT,
RHODE ISLAND

Respondent

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R1-240

Charging Party

Case Nos. BN-CA-21045
BN-CA-21415

Gerard M. Greene, Esq.
For the General Counsel

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

On January 12, 1993, the Regional Director of the Boston Region of the Federal Labor Relations Authority (herein called the FLRA), issued a Consolidated Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Consolidated Complaint alleged that Respondent violated section 7116(a)(1) of the Statute by counselling, admonishing and disciplining employees engaging in lawful activity on behalf of an exclusive representative and by soliciting or encouraging employees to remove a union as the exclusive representative of certain employees.

The Consolidated Complaint allowed Respondent the requisite 20 days, until February 8, 1993 to file an answer pursuant to section 2423.13 of the FLRA's Rules and Regulations. Respondent filed no answer within the required period.

On May 12, 1993, the Regional Director of the Boston Region scheduled the matter for hearing on August 3, 1993 in the Narragansett area. Thereafter, on or around July 13,

1993, Counsel for the General Counsel moved for summary judgment based on Respondent's failure to file an answer in the captioned matters. On that same day the Regional Director of the Boston Region, in accordance with section 2423.22(b) of the Regulations referred the motion to the Chief Administrative Law Judge. Thereafter, on July 15, 1993, the Chief Administrative Law Judge issued an Order granting all parties until July 30, 1993 to file any further pleadings or briefs in the matter. The matter was assigned to the undersigned for disposition pursuant to section 2423.19(t) and section 2423.22(b)(3) of the FLRA Regulations. In response to the Order of the Chief Administrative Law Judge, Counsel for the General Counsel filed a timely brief, however Respondent did not reply.

Since Respondent failed to reply to either the Consolidated Complaint or the Order of the Chief Administrative Law Judge, it is recommended that the motion for summary judgment be granted for the following reasons:

Findings of Fact

The admitted uncontested facts establish the following:

1. The Charging Party is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.
2. During the time period covered by this complaint, the following persons occupied the position set opposite their names:

Norman Rubinstein	Chief, Exposure Branch
Robert Guilmette	Facilities Manager
3. During the time period covered by the Consolidated Complaint, the persons named in paragraph 2 above were supervisors or management officials under section 7103(a)(10) and (11) of the Statute.
4. During the time period covered by the Consolidated Complaint, the persons named in paragraph 2 above were acting on behalf of the Respondent.
5. During the time period covered by the Consolidated Complaint, Mary Johnson, an employee of the Respondent and President of the Charging Party, attended meetings of the Respondent's Space Committee as a representative of the Charging Party.

6. On February 13, 1992, Norman Rubinstein orally counselled Mary Johnson for violating the Respondent's policy on personal conduct and, in the process of counselling Johnson, informed her that one of the reasons for the counselling was her conduct as the Charging Party's representative on the Respondent's Space Committee.
7. On about June 2, 1992, Norman Rubinstein gave Mary Johnson a memorandum dated March 5, 1992 concerning the February 13 oral counselling, which referred to Johnson's conduct as the Charging Party's representative on the Respondent's Space Committee as one of the reasons Johnson was orally counselled.
8. During June 1992, Robert Guilmette solicited employees employed by the Respondent to support a petition for decertification of the Charging Party.

Conclusions

Section 2423.13(b) of the Regulations provides, in pertinent part:

Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

The regulations do not offer an array of options in situations where as here, the Respondent refuses to reply. The failure of Respondent to file any answer in this case requires a finding that it has admitted all the allegations of the instant Consolidated Complaint. Therefore, no genuine issue of fact exists in the matter and disposition by summary judgment is proper.^{1/}

The admissions of fact support a finding that Johnson's February 23 counselling and the ensuing referral to Johnson's protected representational activity in the March 5 memorandum both represented interference, restraint and coercion in violation of section 7116(a)(1) of the Statute.^{2/}

1/ U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida, 37 FLRA 603, 610 (1990).

2/ See, Department of Housing and Urban Development, San Francisco Area Office, San Francisco, California,

(continued...)

Additionally, the admissions of fact support a finding that Respondent interfered, restrained and coerced employees in violation of section 7116(a)(1) of the Statute by soliciting the employees to remove the Charging Party as the exclusive representative for its employees.^{3/}

It is concluded therefore, Respondent has not shown good cause in accordance with section 2423.13(b) of the Regulations for failing to file an answer to the Consolidated Complaint in these proceedings. As a consequence of having failed to file an answer without good cause, it has admitted to all allegations of the Consolidated Complaint. Inasmuch as Respondent has admitted all allegations of the Consolidated Complaint, which if undenied establish a violation of the Statute, it is found to have committed the alleged unfair labor practices in violation of section 7116(a)(1) of the Statute.

Accordingly, it is recommended that the Authority grant Counsel for the General Counsel's motion for summary judgment and issue the following:

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 U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island, shall:

1. Cease and desist from:

(a) Counselling, admonishing or disciplining employees for engaging in lawful activity on behalf of the National Association of Government Employees, Local R1-240.

(b) Soliciting or encouraging employees to remove the National Association of Government Employees,

2/ (...continued)

4 FLRA 460 (1980); Ogden Air Logistics Center, Hill Air Force Base, Utah, 34 FLRA 834 (1990); Equal Employment Opportunity Commission, 24 FLRA 851, 857-858.

3/ See, Veterans Administration, Veterans Administration Data Processing Center, Austin, Texas, A/SLMR No. 523 (1975); Department of the Air Force, Air Force Plant Representative Office, Detachment 27, Fort Worth, Texas, 5 FLRA 492, 500-501 (1981).

Local R1-240, as the exclusive representative of the professional and non-professional employees.

(c) 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.

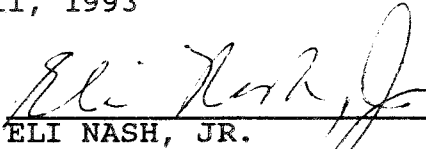
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Remove and rescind from the March 5, 1992 memorandum by Norman Rubinstein, Chief, Exposure Branch, and from any other records, any reference to the activity of Mary Johnson in representing the National Association of Government Employees, Local R1-240, at meetings of the Space Committee, to ensure that Mary Johnson's lawful representational activity will not be used as a basis for counselling, admonishment or disciplinary action.

(b) Post at its facilities in Narragansett, Rhode Island 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 of the Environmental Research Laboratory, 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.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Boston Region, 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, August 11, 1993



ELI NASH, JR.
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 counsel, admonish or discipline employees for engaging in lawful activity on behalf of the National Association of Government Employees, Local R1-240.

WE WILL NOT solicit or encourage employees to remove the National Association of Government Employees, Local R1-240, as the exclusive representative of the professional and non-professional employees.

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 Federal Service Labor-Management Relations Statute.

WE WILL remove and rescind from the March 5, 1992 memorandum by Norman Rubinstein, Chief, Exposure Branch, and from any other records, any reference to the activity of Mary Johnson in representing the National Association of Government Employees, Local R1-240, at meetings of the Space Committee, to ensure that Mary Johnson's lawful representational activity will not be used as a basis for counselling, admonishment or disciplinary action.

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