

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

UNITED STATES AIR FORCE ACADEMY,
COLORADO SPRINGS, COLORADO

Respondent

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 1867

Charging Party

Case Nos. DE-CA-20757
DE-CA-20651
DE-CA-20889

Captain Jeffrey A. Rockwell
For the Respondent

Hazel E. Hanley, Esquire
For the General Counsel

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 amended charges first filed on May 13, 1992 in Case No. DE-CA-20651, June 29, 1992 in Case No. DE-CA-20757, and August 31, 1992 in Case No. DE-CA-20889, by American Federation of Government Employees, Local 1867, (hereinafter called the Union), against the United States Air Force Academy, Colorado Springs, Colorado, (hereinafter called the Respondent), a Consolidated Complaint and Notice of Hearing was issued on December 31, 1992, by the Regional Director for the Denver, Colorado Regional Office, Federal Labor Relations Authority. The Consolidated Complaint alleges that Respondent violated Sections 7116(a)(1), (2) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by (1) unilaterally, without

any prior notice to the Union, changing conditions of employment with respect to the wearing of coveralls off the job, the amount of, and use of official time allowed stewards for representational activities, and the use of telephones by duly authorized union stewards; (2) making numerous entries in Michael Parmelee's 971 file because of his activities as a union steward; and (3) informing employee Donna Parmelee that her problems began when she married union steward Michael Parmelee.

A hearing was held in the captioned matter on May 12, 1993 in Colorado Springs, Colorado. 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 Counsel for the Respondent filed post hearing briefs on July 14, 1993 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 exclusive representative of a unit of employees appropriate for collective bargaining at the Air Force Academy. Included in the 1,800 to 2,500 employees at the Academy represented by the Union are about 400 employees who work in Logistics Distribution, Transportation and Maintenance (LGDTM). The Union and the Respondent are parties to a collective bargaining agreement which provides in Article 6, Section B, that Union officials will be granted "reasonable time" to conduct union representational activities. Section C of the same Article provides as follows:

The supervisor will normally grant permission except when work load precludes such release. When release as requested is not possible, the immediate supervisor will inform the individual when release can probably be granted, which will be as close to the original request as possible.

The agreement also requires in Article 17 that AF Form 971 be used by supervisors to annotate performance discussions, counseling sessions and other pertinent data.

On or about August 26, 1990, Mr. Michael Parmelee was hired by Mr. Leon Meiers, Deputy Superintendent, for a position in the Machine Shop. At the time of Mr. Parmelee's

hire, Mr. Meiers became his second line supervisor, Sergeant Michael Gendron became his third line supervisor, and Mr. Fay Hogeboom became his first line supervisor. According to Mr. Parmelee, Mr. Meiers told him to stay away from James Messina, who at the time was Vice-president of the Union. Mr. Meiers attributed his dislike for Mr. Messina to his affiliation with the Union and the fact that he was not around enough to be a good machinist.

In August 1991 Mr. Parmelee joined the Union and subsequently accepted the position of union steward in October 1991.^{1/} In such position he represented approximately 600 employees in the Logistics and Civil Engineering squadrons. Thereafter, approximately two months after becoming a union representative, Mr. Parmelee learned that the Machine Shop was being dismantled.^{2/} Upon the closing of the Machine Shop, Mr. Parmelee was reassigned to a position in the LGDTM Body Shop.

Prior to April 1992, while a machinist and union steward, Mr. Parmelee had the use of a desk and telephone. Upon being assigned to the Body Shop he was forced to share the telephones located therein with his fellow employees. The telephones were primarily for business and not reserved for the exclusive use of the Body Shop employees or their union representative. However, the employees were not restricted in the use of the telephones and they were frequently paged to receive calls from their families, doctors, etc. The telephones in the Body Shop were in an area which afforded no privacy to the user. Upon being transferred to the Body Shop Mr. Parmelee received two to five telephone calls and up to thirty messages per day. The messages were left in an open box shared by all his fellow employees in the Body Shop. Mr. Parmelee, contrary to the practice followed while he was in the Machine Shop, was allowed to return telephone messages

1/ On September 11, 1991 Mr. Parmelee married Ms. Donna L. Kuhn, who at the time was the Lead Management Assistant (GS-6) in Maintenance Control and Analysis (MCA), a part of LGDTM. Her first line supervisor was Mr. Meiers and her second line supervisor was Sergeant Gendron. There were three other female employees working in MCA along with Ms. Kuhn. At the time of her marriage to Mr. Parmelee, Ms. Kuhn, who will hereinafter be referred to as Ms. Parmelee, was home recuperating from back surgery. Ms. Parmelee returned to work on September 22, 1991.

2/ The dismantling of the Machine Shop commenced around January 1992 and was completed around April 1992.

only on his break or while at lunch. Additionally, the other employees in the Body Shop were told that they were spending too much time on the telephone and that henceforth the front office would screen their calls and determine which calls were important. The important calls would then be put in the open box described above. The aforementioned restrictions on the use of the telephones in the Body Shop by Mr. Parmelee was instituted without any prior notice or bargaining with the Union.^{3/}

On an unspecified date in April 1992 the Parmelees, (Donna and Michael), were in the process of leaving the Body Shop in order to pick up some fast food at a restaurant located off the base and bring it back to the base for lunch. According to Mr. Parmelee, who at the time was wearing coveralls issued by the Respondent, when they passed Mr. Meiers and Mr. Stanosek, who at the time was preparing to take over the duties of first line supervisor Hogeboom, Mr. Stanosek told them to have a nice lunch. Mr. Meiers then stated "Not in those coveralls you don't." When Mr. Parmelee questioned the remark, Mr. Meiers told him that he would have to change out of his coveralls before going off the base to get his lunch. Upon being informed by Mr. Parmelee that he was changing a condition of employment without bargaining, Mr. Meiers replied that it was not negotiable. According to Mr. Meiers and Mr. Stanosek it has always been Respondent's policy that the coveralls were to be removed prior to leaving the shop. Contrary to the foregoing testimony of Mr. Meiers and Mr. Stanosek, Union President Michael Little creditably testified that the employees in the Body Shop were not restricted to wearing their coveralls only in the shop. In this connection he cited the fact that his neighbor always wore his coveralls to and from work and that over the years that he had worked for the Respondent as a gardener he had observed many LGDTM employees wearing coveralls outside their respective work areas. Similarly, according to the credited testimony of Mr. Parmelee, beginning with his employment in August 1990 he wore the coveralls to and from work and out to lunch at fast food restaurants located away from his place of work in LGDTM.

^{3/} According to Sergeant Gendron who imposed the restriction on the use of the telephone by Mr. Parmelee, he did so in response to Mr. Fay Hogeboom's action in restricting Mr. Parmelee use of Official Time to 12 hours per pay period. The circumstances surrounding the restriction on the use of Official Time by Mr. Hogeboom will be described infra.

On or about April 5, 1992, Mr. Parmelee requested official time from Supervisor Hogeboom for purposes of attending a grievance meeting to be held on April 7, 1992. Mr. Hogeboom approved the use of the requested official time for the meeting. On April 7, 1992, a Sergeant Cunningham from Bioenvironmental Engineering arrived at Mr. Parmelee's work area to run a paint dust check. Thereupon a discussion ensued in the presence of Mr. Hogeboom as to whether the test could be split into two parts so that Mr. Parmelee could attend the April 7th ~~grievance meeting for which Mr. Parmelee had earlier~~ been granted official time to attend. Mr. Cunningham, who had previously worked around Mr. Parmelee's union activities when he was working in the Machine Shop, agreed to the suggested arrangement for the test. Mr. Hogeboom, at the time, voiced no objections to the arrangements.

On the morning of April 13, 1992 Supervisor Hogeboom informed Mr. Parmelee that his official time for conducting union representational activities was being capped at 12 hours per pay period. According to the testimony of Mr. Stephen Fuhrmann, who at the time was Chief of Labor and Employee Relations, it was he who determined that Mr. Parmelee's use of official time should be capped at 12 hours per pay period. He reached this conclusion after reviewing the official time records for approximately 15 to 20 pay periods and discovering that the average steward utilized approximately four hours of official time per pay period. Inasmuch as Mr. Parmelee was "a skilled, enthusiastic, and popular steward", he reasoned that three times the amount of official time used by other stewards was a reasonable amount of time to allow Mr. Parmelee. No restrictions were put on any other steward with respect to the use of official time. Mr. Fuhrmann was of the further opinion that the Union was not distributing its work load properly among its stewards because it recognized that in Mr. Parmelee they had a "superstar". According to Mr. Fuhrmann his investigation into the use of official time by union stewards indicated that Mr. Parmelee had used anywhere from 14 to 72 hours of official time during an 80-hour pay period. Admittedly, the Union was not given any advanced notice of the change which according to Mr. Fuhrmann, was his interpretation of what should be considered a "reasonable" amount of official time within the meaning of Article 6 of the collective bargaining agreement.

According to Sgt. Gendron, the restrictions put on Mr. Parmelee's use of official time for union representational activities impacted on the use of the telephone in the Body Shop. Following imposition of the 12-hour restriction he noticed that there was a marked increase in the use of the telephones in the Body Shop by Mr. Parmelee. Inasmuch as

Mr. Parmelee was tying up the telephone for periods of 30 to 40 minutes on union business, the restrictions on the use of the telephone were imposed upon him.

Further according to Sgt. Gendron, at the time that Mr. Parmelee was transferred to the Body Shop, the Body Shop had a backlog of some 1200 hours of work due to its annual reconditioning of the snow removal equipment which was to be finished by a specified date. Inasmuch as Mr. Parmelee's services were needed to complete the reconditioning by the specified date, Respondent imposed the 12-hour per pay period restriction on Mr. Parmelee. The restriction was lifted after a period of two and one-half to three months when the reconditioning was completed. At the time that the restriction on the use of official time was imposed upon Mr. Parmelee he was not told that such restriction was only temporary.

With respect to the specified date referred to above, the record indicates that the time limits for completing the reconditioning of the snow removal equipment was not tied to weather expectations but rather to the date of the annual "snow parade".

According to the credited testimony of Mr. Parmelee^{4/}, when he was orally informed by Mr. Hogeboom on April 13, 1992 that his official time for conducting union representational activities was being capped at 12 hours per pay period, Mr. Parmelee proceeded to inform him that he was in violation of two articles of the collective bargaining agreement and various provisions of the Statute. The quoting of the portions of the collective bargaining agreement and the Statute appeared to anger Mr. Hogeboom. Thereafter during the period between April 13 and 15, 1992, Mr. Hogeboom issued a number of memos and 971 file entries to Mr. Parmelee for alleged discourteous conduct and misuse of official time.

In one memorandum Mr. Hogeboom accused Mr. Parmelee of discourteous conduct by (1) telling Ms. Debbie Huber, a

^{4/} Mr. Hogeboom did not testify. Accordingly, Mr. Parmelee's testimony concerning the conversation surrounding the institution of the 12-hour per pay period restriction on Mr. Parmelee's use of official time as well as the manner in which he made the statements and/or acts which are alleged by the memoranda to be discourteous, stands uncontradicted. Sgt. Gendron's testimony concerning the events cited in the memoranda admittedly is based solely on what was told him by Mr. Hogeboom.

staffing specialist in the Civilian Personnel Office^{5/}, that due to the fact that he had a 12-hour limitation with respect to the use of official time that he could not come to her office to sign certain papers, (2) by stating to Mr. Hogeboom, "you mean I am allowed to have telephone calls" when Mr. Hogeboom informed him that he had a telephone call, (3) by asking Mr. Hogeboom if he could go to the bathroom, and (4) telephoning Mr. Hogeboom to confirm the proper spelling of Mr. Hogeboom's name for use in a possible grievance and/or unfair labor practice charge.

In another memorandum concerning the use of official time by Mr. Parmelee on April 7th, Mr. Hogeboom accused Mr. Parmelee of ignoring his decision to conduct a paint dust test in one day and rescheduling the test for two days without first clearing the rescheduling with management.

The counseling memoranda described above resulted in a number of form 971 entries being inserted in Mr. Parmelee's informal personal file.

Mr. Parmelee acknowledges that the incidents described in the above mentioned memoranda did occur but denies that he was discourteous or insubordinate. Other than the testimony of Sgt. Gendron as to what Mr. Hogeboom related to him about the incidents, Mr. Parmelee's testimony stands uncontradicted by any direct evidence.

With respect to the accusation concerning the unauthorized rescheduling of the paint dust test, Mr. Parmelee was under the impression that such rescheduling met the approval of Mr. Hogeboom since the complete discussion between Mr. Parmelee and Sgt. Cunningham from Bioenvironmental Engineering over dividing the paint dust test over a two-day period occurred in front of Mr. Hogeboom without any voiced objection from him. With respect to informing Civilian Personnel that he was not allowed to come down to sign papers, Mr. Parmelee attributes his action in this regard to the fact that he had already used up his allotted 12 hours of official time per pay period and was of the opinion that he would be

^{5/} This action by Mr. Parmelee resulted in a telephone call to Mr. Hogeboom wherein Civilian Personnel inquired the reason for Mr. Hogeboom's refusal to allow Mr. Parmelee to come to the Civilian Personnel Office to sign certain papers. Mr. Hogeboom, who had not refused permission for Mr. Parmelee to go to the Civilian Personnel Office was irritated by Mr. Parmelee's action.

violating the restriction if he left his work to go to the Civilian Personnel Office. With respect to asking Mr. Hogeboom whether he could go to the bathroom and/or receive telephone calls at work, Mr. Parmelee testified that both questions were due to the fact that Mr. Hogeboom had been watching him closely and he did not know what he was allowed to do. Finally, with respect to calling Mr. Hogeboom for the correct spelling of his name, Mr. Parmelee testified that he resented the fact that his name was often misspelled and he did not want to misspell Mr. Hogeboom's name on a unfair labor practice charge that he was preparing. At the time, Mr. Hogeboom was not aware of the fact that he was named in a unfair labor practice charge being prepared by Mr. Parmelee.

Turning now to the final allegation of the Complaint, i.e. the remarks made by Sgt. Gendron and Mr. Meiers to Ms. Parmelee with respect to why she was being shunned by her fellow office workers. According to the credited testimony of Ms. Parmelee, following a six-month absence from work wherein she had a back operation and married Mr. Parmelee, Ms. Parmelee returned to work in the MCA Section of LGDTM. Her first line supervisor was Mr. Meiers and her second line supervisor was Sgt. Gendron.

Prior to taking a leave of absence for purposes of having a back operation, Ms. Parmelee served as lead management assistant, GS-6. Her fellow co-workers in the MCA were Ms. Connie Jackson, Ms. Carol Grahams and Ms. Carol Crosby. Ms. Jackson and Ms. Grahams were GS-5s and Ms. Crosby was a GS-4. Despite her title, Ms. Parmelee was not a supervisor.

Following her return to work on September 22, 1991 and her husband's (Mr. Parmelee) acceptance of the position of union steward in October 1991, Ms. Parmelee's close relationship with her co-workers and Mr. Meiers "went gradually downhill". Ms. Parmelee believes that the deteriorating relationship with respect to her fellow employees was attributable to the fact that they were being required by their supervisors to type up rebuttals, etc., to charges or complaints filed by Mr. Parmelee in his capacity as an active union steward.

In addition to the deteriorating relationship with her fellow employees, Ms. Parmelee was also disturbed by the fact that management did not immediately reassign to her the full range of duties called for in her job description. Feeling that the duties might not be returned to her she raised the matter with Sgt. Gendron who assured Ms. Parmelee that her former duties would be returned to her.

Subsequently, when Sgt. Gendron failed to live up to his promise with respect to returning all the work called for in Ms. Parmelee's position description, Ms. Parmelee complained to Union President Mike Little. Inasmuch as Mr. Meiers was off from work due to heart bypass surgery, Mr. Little arranged for a first step grievance meeting to be held on June 15, 1992 with Sgt. Gendron. The meeting was attended by Mr. Little, Ms. Parmelee, Sgt. Gendron and Ms. Linda Brugger an Employee Relations Specialist. Mr. Little opened the meeting by describing Ms. Parmelee's concerns and asking Sgt. Gendron for a copy of her position description. Sgt. Gendron responded by stating that Ms. Parmelee's duties had not been fully restored because the medication she was taking affected her work performance. Upon Mr. Little's objection to the explanation made by Sgt. Gendron, Sgt. Gendron then stated "Donna's [Ms. Parmelee] problem started when she married Mike Parmelee". Ms. Brugger then interrupted and stated "Mike, you can't blame Donna for Michael's activities with the Union". After further discussion and just prior to the end of the meeting, Ms. Parmelee told Sgt. Gendron that his practice of having her office co-workers typing documents involving her husband was the cause of her problems within the office. Both Ms. Brugger and Mr. Little interposed objections to the practice and Sgt. Gendron agreed to halt the practice. The meeting ended with Sgt. Gendron agreeing to meet with Mr. Meiers and Ms. Parmelee for purposes of reviewing her position description.^{6/}

Prior to 1992 Ms. Parmelee had always received a 9 on her performance appraisal for the category involving "working relationships". On August 18, 1992, Mr. Meiers summoned Ms. Parmelee into his office for purposes of giving her an appraisal for the year 1991-1992. Under "working relationships", Mr. Meiers had reduced her rating from 9, which is the highest, to 6. According to the credited testimony of Ms. Parmelee, when she objected to the rating, Mr. Meiers told Ms. Parmelee that there was a "gap" between her and Ms. Jackson because they did not talk with each other. After Ms. Parmelee informed Mr. Meiers that it was not her fault since she had unsuccessfully attempted to talk to Ms. Jackson, Mr. Meiers stated that her, Ms. Parmelee's, problems started when she married Mr. Parmelee. Mr. Meiers further informed her that her co-workers were afraid to talk

^{6/} The foregoing is based upon the credited testimony of Mr. Little and Ms. Parmelee. While both Ms. Brugger and Sgt. Gendron acknowledge that the remark concerning the cause of Ms. Parmelee's problems with her co-workers was made by Sgt. Gendron, they try to put it in a different context.

to her because they felt that she would carry tales back to her husband.

Discussion and Conclusions

With the exception of the alleged 7116(a)(1) statements made to Ms. Parmelee by Sgt. Gendron and Mr. Meiers and the coverall issue, there does not appear to be any disagreement that the alleged changes and events cited in the Complaint as unfair labor practices did occur. The Respondent, contrary to the contention of the General Counsel, denies that such changes and/or events constituted unfair labor practices.

Turning first to the restrictions placed upon Mr. Parmelee with respect to the use of the telephones in the Body Shop and official time for purposes of union representational activity, I find that the record supports a finding that such restrictions constituted a unilateral change from past practice. I further find that in the case of the restriction on the use of official time, such restriction also violated the terms of the collective bargaining agreement.

It is well settled that a union is to be allowed a certain amount of official time in which to conduct its representational activities. The amount so allowed is to be determined through negotiations between the parties. Once the amount has been determined any changes therein, absent an emergency or other special circumstances, must first be bargained over with the Union. Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California, 36 FLRA 516; Military Entrance Processing Station, Los Angeles, California, 25 FLRA 685.

In the instant case the record discloses that prior to April 13, 1992, no restrictions had been imposed upon union stewards with respect to the use of official time and telephones for purposes of conducting their respective representational activities, except the obligation to secure prior approval from their respective supervisors who retained the right to deny the immediate use of the requested official time on the basis of current workload. However, on April 13, 1992, Respondent unilaterally determined that "reasonable time" to conduct union representational activities in the case of Mr. Parmelee would henceforth be limited to 12 hours per pay period and that his use of the telephones would be restricted to break and lunch periods. Although the restrictions were in effect for only a three or four month period, at the time of their imposition neither Mr. Parmelee or any other union representative was informed that such restrictions were only temporary. Furthermore, no exigency

for the restrictions was proffered by Respondent. To the extent that Respondent's representatives have attempted to justify such action on the fact that the Body Shop had a backlog of some 1200 hours of work due to its annual reconditioning of snow removal equipment, I find such defense to be without merit. The time limit imposed upon the Body Shop for completion of the reconditioning was not tied into any expected snow storm, but rather to a scheduled parade where the snow removal equipment was to be on display. Moreover, the record indicates that the Body Shop always had a backlog of work. Finally, there was no showing that the deadline for the completion of the reconditioning of the snow equipment could not have been met without the full participation of Mr. Parmelee.

In view of the foregoing considerations, I find that the imposition of restrictions on Mr. Parmelee with respect to his utilization of "reasonable" official time and the telephones in the Body Shop, without first bargaining with the Union, violated Sections 7116(a)(1) and (5) of the Statute.

I further find that the imposition of the 12-hour per pay period restriction with respect to the use of official time by Mr. Parmelee breached the collective bargaining agreement, and that such breach amounted to a repudiation of the collective bargaining contract since it interfered with the ability of the union's designated representative to function. Accordingly, Respondent's action constituted a further violation of Sections 7116(a)(1) and (5) of the Statute. Cf. Naval Satellite Operations Center, 40 FLRA 1205, 1218.

Turning now to the 971 entries which are alleged by the General Counsel to be violative of Sections 7116(a)(1) and (2) of the Statute, I find that the entries dealing with asking permission to go to the bathroom, expressing amazement that telephone calls could be received during working time, indicating to the Personnel Office that he was restricted from leaving his job during working hours and requesting the correct spelling of Mr. Hogeboom's name, were justified and not violative of the Statute. A supervisor is under no obligation to tolerate remarks and/or actions which are designed to arouse his anger. To the extent that Counsel for the General Counsel has cited a number of cases in support of her position that the remarks and actions were not of such an outrageous and insubordinate nature as to remove them from the protection of the Statute, I find that such cases are clearly distinguishable since the derogatory and insulting remarks made in such cases arose while the parties were engaged in grievance and/or collective bargaining negotiations. In the instant case the remarks were made at a time when Mr. Parmelee

was performing his normal Body Shop duties as a rank and file employee.

However, with respect to the 971 entry dealing with Mr. Parmelee's action in bifurcating the paint dust inspection, I find that such entry was in retaliation for Mr. Parmelee's earlier participation in union activities. Thus, based upon the credited testimony of Mr. Parmelee, I find that Mr. Hogeboom was highly irritated with Mr. Parmelee's actions in accusing him of violating various provisions of the Statute and collective bargaining agreement when he, Mr. Hogeboom, informed Mr. Parmelee of the 12-hour restriction per pay period on the use of official time. This coupled with the fact that the arrangements to bifurcate the painting inspection were made in his presence without objection supports the conclusion that the 971 entry concerning the unauthorized bifurcation was solely an attempt to retaliate against Mr. Parmelee for his protected remarks concerning the unlawfulness of the restrictions imposed upon him with respect to the use of official time. Accordingly, based upon the foregoing, I further find that Mr. Hogeboom's action in making the 971 entry based upon the bifurcation of the paint dust test constituted a violation of Sections 7116(a)(1) and (2) of the Statute.

With respect to the allegation of the Complaint dealing with the wearing of coveralls outside the LGDTM compound, I find based upon the credited testimony of Mr. Parmelee and Mr. Little, that at least since 1976 employees wore the coveralls outside the LGDTM compound. In such circumstances, Mr. Meiers' action in April 1992 with respect to banning the wearing of the coveralls outside the LGDTM compound constituted a unilateral change in an existing condition of employment. Accordingly, I find that Respondent by taking such action without prior notice and bargaining with the Union violated Sections 7116(a)(1) and (5) of the Statute. Cf. Department of Defense, Warner Robins Air Force Logistics Center, Robins Air Force Base, Georgia, 35 FLRA 68.^{7/}

7/ There was no contention by Respondent that the wearing of the coveralls was a "method or means" chosen by Respondent to conduct the mission of the Agency.

While I am aware that there is no direct evidence indicating that Respondent's representatives were aware of the employees' action in wearing the coveralls off the LGDTM compound, having credited the testimony of Mr. Parmelee and Mr. Little as to frequency of the practice, I find, contrary
(continued...)

Turning now to the final allegation of the Complaint, i.e. the statements made by Sgt. Gendron and Mr. Meiers to Ms. Parmelee to the effect that her troubles started when she married Mr. Parmelee, the union steward. While neither Mr. Meiers nor Sgt. Gendron deny making the alleged statements, they claim that in making the statements they were merely agreeing with Ms. Parmelee's proffered assessment of the reasons for her inability to get along with her fellow office workers.

Contrary to the testimony of Mr. Meiers and Sgt. Gendron, I find, based upon the credited testimony of Ms. Parmelee and Mr. Little, that Ms. Parmelee at no time during her discussions with Sgt. Gendron concerning her failure to be assigned the complete range of duties called for in her position description or with Mr. Meiers concerning her low mark with respect to "working relationships" on her performance appraisal, attributed her problems to her marriage to Mr. Parmelee. While in the case of the conversation with Mr. Meiers there might have been some reason for raising the connection between Ms. Parmelee and her husband, there certainly was no reason for raising such connection in the discussion between Sgt. Gendron and Ms. Parmelee which merely concerned the failure of Ms. Parmelee to have all the duties called for in her position description returned to her. Accordingly, having credited the testimony of Ms. Parmelee and Mr. Little, I further find that by stating to Ms. Parmelee that her troubles started when she married Mr. Parmelee, Respondent, by virtue of the statements uttered by Mr. Meiers and Sgt. Gendron violated Section 7116(a)(1) of the Statute since such statements interfered with Ms. Parmelee's Section 7102 right to join and support a Union and made it clear that association with Mr. Parmelee, the union steward, was the reason for her low marks in "work relationships" and her inability to secure the full range of duties set forth in her position description.^{8/}

7/ (...continued)

to the testimony of Mr. Meiers and Mr. Stanosek, that management must have been aware of the practice.

8/ Although the statements made by Mr. Meiers and Sgt. Gendron were made in connection with discussions concerning actions taken or not taken with respect to Ms. Parmelee's conditions of employment, it should be noted that the Complaint does not contain 7116(a)(2) allegations predicated upon the failure of Ms. Parmelee to secure the complete range of duties called for in her job description or
(continued...)

In view of the foregoing findings and conclusions, it is hereby recommended that the Federal Labor Relations Authority issue the following Order.

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 United States Air Force Academy, Colorado Springs, Colorado, shall:

1. Cease and desist from:

(a) Unilaterally changing conditions of employment of bargaining unit employees by prohibiting the wearing of coveralls outside the Logistics Distribution Transportation and Maintenance (LGDTM) compound without first giving notice to American Federation of Government Employees, Local 1867, (AFGE), the exclusive representative of its employees, and allowing it the opportunity to bargain over such change.

(b) Unilaterally changing conditions of employment of bargaining unit employees by limiting union steward Michael Parmelee's access to telephones and restricting his official time to 12 hours per pay period without first giving notice to AFGE, the exclusive representative of its employees, and allowing it the opportunity to bargain over the substance, impact and manner of implementation of such changes.

(c) Placing counselling annotations and memoranda dealing with rescheduling paint dust inspections in union steward Michael Parmelee's Air Force 971 file in retaliation for his participation in activities protected by the Statute.

(d) Telling a unit employee during grievance and/or performance appraisal counselling meetings, that her problems began when she became associated with the union steward.

(e) Failing and refusing to honor the terms of the existing collective bargaining agreement with the AFGE by changing the amount of time accorded union steward Michael Parmelee for representational activities from "reasonable" to 12 hours per pay period.

8/ (...continued)
to achieve a high rating on her job appraisal with respect to "working relationships".

(f) In any like or related manner interfering with, restraining or coercing 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) Restore the practice of allowing unit employees working in the LGDTM compound to wear their coveralls to and from work and to and from their 45 minute unpaid lunch hour.

(b) Restore the practice of allowing union steward Michael Parmelee a reasonable amount of official time to conduct union activities and also allow him access during working hours to the telephones located in the LGDTM compound.

(c) Expunge from union steward Michael Parmelee's Air Force 971 file any references to his actions in rescheduling paint dust inspections in order to attend management approved union representational activities.

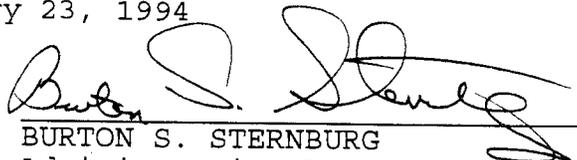
(d) Prior to making any changes in existing conditions of employment, including, among other things, the amount of official time allowed union stewards to conduct representational activities, the wearing of coveralls outside the LGDTM compound and the use of telephones within the LGDTM compound by union stewards to conduct union representational activities, notify the AFGE, the exclusive representative of the employees working in the LGDTM compound, and afford it the opportunity to bargain over the substance, impact and manner of implementation of any contemplated changes.

(e) Adhere to the terms of the collective bargaining agreement currently in effect with the AFGE and allow union steward Michael Parmelee "reasonable" official time to conduct his union representational activities.

(f) Post at the United States Air Force Academy, Colorado Springs, Colorado, 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 Superintendent of the United States Air Force Academy, 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.

(g) Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Denver, Colorado Regional Office, 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, February 23, 1994


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 unilaterally change conditions of employment of bargaining unit employees by prohibiting the wearing of coveralls outside the Logistics Distribution Transportation and Maintenance (LGDTM) compound without first giving notice to American Federation of Government Employees, Local 1867, (AFGE), the exclusive representative of our employees and allowing it the opportunity to bargain over the substance, impact and manner of implementation of such change.

WE WILL NOT unilaterally change conditions of employment of bargaining unit employees by limiting union steward Michael Parmelee's access to telephone and restricting his official time to 12 hours per pay period without first giving notice to AFGE, the exclusive representative of our employees, and allowing it the opportunity to bargain over the substance, impact and manner of implementation of such changes.

WE WILL NOT place counselling annotations and memoranda dealing with rescheduling paint dust inspections in union steward Michael Parmelee's Air Force 971 file in retaliation for his participation in activities protected by the Statute.

WE WILL NOT tell a unit employee during grievance and/or performance appraisal counselling meetings, that her problems began when she became associated with the union steward.

WE WILL NOT unilaterally change the provisions of the collective bargaining agreement currently in effect with the AFGE and allow union steward Michael Parmelee only 12 hours of official time per pay period instead of the "reasonable" amount of official time set forth in the collective bargaining agreement for union representational activities.

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

WE WILL adhere to the practice of allowing unit employees working in the LGDTM compound to wear their coveralls to and from work and to and from their 45 minute unpaid lunch hour.

WE WILL expunge from union steward Michael Parmelee's Air Force 971 file any reference to his actions in rescheduling paint dust inspections in order to attend management approved union representational activities.

WE WILL prior to making any changes in existing conditions of employment, including, among other things, the amount of official time allowed union stewards to conduct representational activities, the wearing of coveralls outside the LGDTM compound and the use of telephones within the LGDTM compound by union stewards to conduct union representational activities, notify the AFGE, the exclusive representative of the employees working in the LGDTM compound, and afford it the opportunity to bargain over the substance, impact and manner of implementation of any contemplated changes.

WE WILL adhere to the practice set forth in the collective bargaining agreement with the AFGE which allows union steward Michael Parmelee to use a "reasonable" amount of official time to conduct his union representational activities.

_____ (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 any of its provisions, they may communicate directly with the Regional Director, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 100, Denver, CO 80204-3581 and whose telephone is (303) 844-5224.