



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

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DEPARTMENT OF VETERANS AFFAIRS
VA MEDICAL CENTER
RICHMOND, VA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2145, AFL-CIO

CHARGING PARTY

Case No. WA-CA-13-0143

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For the General Counsel

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For the Respondent

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For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

A nurse at an intensive care unit found himself answering a number of calls for a clerk. When advised that the clerk was unavailable, the caller would hang up without leaving his name or a message. The nurse became frustrated with the caller (and with the fact that the clerk was not around to answer the calls herself), and he also became concerned for the nurse's safety. He relayed his concerns to the nursing supervisor, who then spoke to the clerk and suggested she report the calls to the police. The clerk indeed felt threatened – not by the anonymous calls but by the nurse and supervisor, who she believed were trying to get her into trouble. She accused the supervisor of harassing her and said she was going to report the incident to the Union.

The outcome of this case turns on what the supervisor said in response to the clerk. The supervisor claims she told the clerk, "Yeah, sure. That's fine." The clerk, however, insists that the supervisor told her, "Go ahead and report it . . . I hear the Union here isn't any good anyway . . . you know what we call people that run to the Union? We call them troublemakers."

If I find that events unfolded as the clerk describes, the supervisor's comments were an unfair labor practice; if I find that they happened as the supervisor describes, there was no unfair labor practice. For reasons that I will explain, I find the testimony of the supervisor and the nurse more believable than the testimony of the clerk, and thus I conclude that the supervisor did not make the coercive comments alleged, and that the Agency did not violate the Statute.

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority, (the Authority or FLRA), 5 C.F.R. part 2423.

On January 8, 2013, the American Federation of Government Employees, Local 2145, AFL-CIO (the Union), filed an unfair labor practice charge against the Department of Veterans Affairs, VA Medical Center, Richmond, Virginia (the Agency or Respondent). GC Ex. 1(a). After investigating the charge, the Regional Director of the FLRA's Washington Region issued a Complaint and Notice of Hearing on April 9, 2013, on behalf of the FLRA's General Counsel (GC), asserting that the Agency violated § 7116(a)(1) of the Statute when a supervisor told a bargaining unit employee that the Union was "no good" and that people who went to the Union were "troublemakers." GC Ex. 1(b). The Respondent filed its Answer to the Complaint on April 26, 2013, denying that it had violated the Statute. GC Ex. 1(c).

A hearing was held in this matter on June 12, 2013, in Richmond, Virginia. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The GC and Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observations of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The American Federation of Government Employees (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the exclusive representative of a nationwide bargaining unit of employees of the Department of Veterans Affairs (VA). The Union is an

agent of AFGE for the purpose of representing bargaining unit employees of the Respondent. AFGE and the VA are parties to a collective bargaining agreement that covers employees of the Respondent.

This case involves a discussion that took place in Unit 4A of the Hunter Holmes McGuire Medical VA Center in Richmond, Virginia. Unit 4A encompasses the Coronary Care Unit (CCU) and the Medical Intensive Care Unit (MICU). Tr. 12. The CCU and the MICU each have a nurse's station, but the two are next to each other and are often referred to as a single nurse's station. Tr. 20.

Daniel Conner is a staff ICU nurse in Unit 4A and is a bargaining unit employee. Tr. 66, 90-91. At times, Conner acts as a charge nurse, making him responsible for overall care of patients in Unit 4A, but he does not act as a supervisor in that role. Tr. 67-68. Katherine Osborne is the nurse manager for Unit 4A, and she supervises Conner and the other nurses there. Tr. 44. Hope Greene is a unit support clerk who worked in Unit 4A when the events of this case occurred, and who later transferred to a different unit in the hospital. Tr. 12, 26-27. While working in Unit 4A, Greene was supervised by a Ms. Blackwell. Tr. 14-15. Greene's duties included helping nurses create patient records and answering phone calls at the nurse's station, although nurses will also answer the phone when a clerk is not available. Tr. 18, 47-48, 73.

At some point in the first or second week of December 2012,¹ Conner received the first of "at least ten" phone calls from a caller with a "very deep, male, gruff-sounding voice." Tr. 77, 83. It appeared to him that the calls originated from within the hospital, because the phone would make a single ring. Tr. 70. Each time Conner answered a call from this man, the man would ask for Greene; Conner would tell him that Greene was not available and ask him to leave his name and a message, but the man would then hang up "abruptly." Tr. 69.

On Monday, December 17,² Conner told Greene about these calls. Tr. 15. Conner said that because of the frequency of these calls, "it became a problem." Tr. 69. Greene recalled at the hearing that Conner "was upset because he said someone called for me and they didn't leave their name." Tr. 15. Greene testified that she asked Conner why he didn't simply transfer the call to her, and she told him "I had no idea who it was. [Conner] was saying it was rude for [the caller] to do that," and that he "didn't appreciate" the calls. Tr. 16. All Greene could say, however, was that "I didn't know who it was." *Id.*

A few hours later, Greene testified, Conner received another, similar, call for Greene. Greene testified that when Conner told her about the call, "he was irate . . . he said he was getting tired of it and was upset. He said I think I'm going to have to report this to Ms. Osborne." Tr. 16. Greene responded to Conner that it was "fine if he wanted to report it." Tr. 17. Greene understood that Osborne is "the manager of that unit and I guess he wanted her to know what was going on." Tr. 17-18.

¹ All dates are in 2012 unless otherwise noted.

² Although Conner did not recall talking to Greene about the calls on December 17 (Tr. 77), the Respondent accepts that there was a conversation on that date. R. Br. at 2.

On Friday, December 21, Conner received three or four more calls from this man, asking for Greene, and hanging up when told that Greene was not available. Tr. 76-77. At that point, Conner figured that "something's got to be wrong" (Tr. 85), and as he described later, "I became concerned about Ms. Greene's safety." Tr. 69. He considered calling the VA police, but decided instead to let the nurse manager, Osborne, handle it. Tr. 69-70, 79. Conner went to Osborne's office, which was in a room located about twenty-five feet from the nurse's station, and told her about the calls and about his concerns that an unidentified person "kept calling who may not have Ms. Hope Greene's interest in mind." Tr. 72-73; *see also* Tr. 48-49, 59, 84. He asked Osborne whether he should call the police, and Osborne said she would talk to Greene about the situation. Tr. 58-59, 85.

While Conner was talking to Osborne, Greene was at the nurse's station and overheard the two of them. Tr. 18-19. Greene heard Osborne tell Conner, "however he wanted to handle the situation that she would back him 100 percent." Tr. 20. Greene testified that she felt "threatened" and feared that they would "write me up . . . to make it look like I was causing trouble." Tr. 37. Osborne and Conner both denied that she said anything about backing Conner up. Tr. 60, 85. Osborne testified that Conner did not say that Greene was doing anything improper. Tr. 59. She added that employees are free to take personal phone calls. Tr. 49. Her concern in agreeing to talk to Greene was simply "to establish that we had a safe work area and that she was safe." Tr. 60. She further explained that earlier in her career, she had seen situations in which VA nurses had been stalked and killed in or near their hospitals. "I do understand that bad things happen in federal facilities." Tr. 56.

So, shortly after Conner left her office, Osborne went out toward the CCU area of the unit, approached Greene, and asked her about the numerous anonymous phone calls that Conner had been receiving. Tr. 20-21, 49, 80-81. The conversation that ensued between Osborne and Greene is the crux of this case, so I will describe it separately, from each person's perspective.

The Conversation According to Osborne

Osborne testified that she told Greene, "I'm very concerned over something that's been brought to my attention that you are getting a lot of phone calls and you don't know who's calling. Should you call the police or should I call the police? And she just [sort] of exploded." Tr. 62; *see also* Tr. 49. Greene "got kind of loud and just said that, you know, she had a right to receive phone calls. And I said, well, of course you do, but if you don't know who they're coming from, that's concerning." Tr. 62. Greene told Osborne that she was "going to go to the Union because this was harassment . . ." Tr. 64. Osborne responded, "Yeah, sure. That's fine." Tr. 50.

Greene's reaction caught Osborne off guard. Osborne testified, "I guess I was shocked at her comment because it just didn't match – I mean, I'm concerned about the woman's wellbeing, and she comes back with I'm going to contact the . . . Union." Tr. 51. It was if the two were having "two different conversations," Osborne testified. Tr. 50.

As Greene went to leave the area, Osborne told her that she should call her supervisor. Osborne then decided to page Greene's supervisor herself, "because things were [getting] out of control." Tr. 50.

Asked whether she told Greene that she had heard the Union was "no good," Osborne replied, "No, sir, I did not say that." Tr. 52. Asked whether she told Greene that management referred to employees who went to the Union as troublemakers, Osborne replied, "No, sir, I never said that." *Id.*

I asked Osborne whether she made it clear to Greene that she hadn't done anything improper. Osborne replied, "There was no intention of mine to imply any of that, no sir. My full intention was to establish that we had a safe work area and that she was safe." Tr. 60. I then asked whether it was possible that Greene felt Osborne was intruding into her personal life by asking about the calls. Osborne replied, "I guess that could be an explanation of her reaction, but, again, that was not my intent. . . . But, I certainly see that now, that maybe that's the way she did take it." Tr. 63-64. As for whether Greene seemed to be concerned about her safety, Osborne answered, "Actually, she did not." Tr. 60.

The Conversation According to Greene

Greene testified that after hearing part of the conversation between Conner and Osborne, she returned to the CCU side of the unit, near the nurse's station, to resume her work, and about fifteen minutes later, Osborne came over to talk to her. Tr. 20. Osborne asked Greene about the phone calls; Greene responded that she wasn't responsible for the people who called her, and she objected to Conner "screening" her phone calls. Tr. 21. According to Greene, Osborne replied that Conner "could do . . . whatever he wanted to do." *Id.*

Greene testified that Osborne then "asked me was I being stalked." Tr. 21. Greene replied that she wasn't, but Osborne encouraged her to "report it to the police because she know of women that have died from getting phone calls and from that very type of incident" *Id.* Greene declined to do so, because, she testified, "nobody called me and hung up and nobody's calling . . . my home hanging up, so I didn't feel threatened with the phone calls." Tr. 22.

Greene sensed that Osborne "wasn't listening to anything" she said and was "on Dan's side," and as a result, "I told her I felt like I was being harassed and I felt like I was being threatened and I told her I would have to report this to the Union." *Id.* Asked to explain her thinking further, Greene testified:

Well, between her and Dan and her closed mind, I felt . . . like I was in a hostile environment. I – the way she was glaring at me with that hateful look, I just felt like I was in a hostile environment and I just felt like I was being harassed and that's why I told her I felt uncomfortable, I feel like I'm being harassed, and I feel like I may have to report this to the Union.

Tr. 40. Osborne then responded to Greene:

She told me to go ahead and report it to the Union, and then she said I hear the Union here isn't any good anyway. And she said, and you know what we call people that run to the Union? We call them troublemakers.

Tr. 22. Greene testified that she believed that when Osborne said "we," she meant "management, my supervisor, and I think she was meaning that I would be labeled a troublemaker with the management if I go report things to the Union." *Id.*

After Osborne made this remark to her, Greene started walking out of Unit 4A and toward Unit 4B. Osborne "came at me in a threatening manner" and asked if she was leaving her post, but Greene continued walking to 4B, where she swapped positions with a clerk there for the rest of her shift. Tr. 23.

A day or two later, Greene wrote a "Report of Contact" form regarding the incident, "so it could stay fresh" in her mind. Tr. 23-24. Greene also explained, "I felt threatened for my job and I knew . . . Ms. Osborne was going to go to my supervisor and I wanted . . . this documented and wanted to show it to her and I wanted to take this [to the] Union." Tr. 25. In the "Report of Contact," Greene described essentially the same events that she described in her testimony. Among other things, she wrote that Osborne said the Union is "no good" and that people who seek the Union's assistance are deemed "troublemakers." GC Ex. 2 at 2.

The Conversation According to Conner

Conner testified that when Osborne came out of her office to talk to Greene, Greene was standing in the hallway near the nurse's station. Conner was at the monitors in the nurse's station, about ten feet from Osborne and ten feet from Greene, and as the two women spoke, he could hear everything they said. Tr. 73-74, 86-87. He remembered Osborne asking Greene whether she knew who the caller was, and telling Greene "we're concerned for your safety." Tr. 88; *see also* Tr. 73. Greene "seemed to get upset . . . and she just kind of made like a tense posture and said I don't know who's calling me, how would I know who's calling" Tr. 88. Greene "yelled out that, well, I'm going to talk to my Union rep, and she started to leave." Tr. 73; *see also* Tr. 88. Osborne asked Greene whether she was going on break, and Greene then left Unit 4A. *Id.*

At the hearing, Conner was asked whether he heard Osborne tell Greene to "go ahead and call the Union." Conner replied that he did not. Tr. 74. He was also asked whether he heard Osborne say that the Union was "no good." Conner replied, "No good? No, no." *Id.* Finally, Conner was asked whether he heard Osborne say that employees who went to the Union were "troublemakers." Conner replied, "No, sir." *Id.*

POSITIONS OF THE PARTIES

General Counsel

The General Counsel argues that an agency violates § 7116(a)(1) of the Statute when there has been a “direct threat in connection with the exercise of protected rights,” such as when a manager does something to cause employees to “think twice” before engaging in union activity. GC Br. at 8-9 (citing *U.S. Penitentiary, Florence, Colo.*, 53 FLRA 1393 (1998), *Dep’t of the Treasury, IRS, Louisville Dist.*, 11 FLRA 290, 298 (1983) (*IRS*)). The GC contends that by telling Greene that the Union “isn’t any good” and that employees seeking the Union’s assistance are seen as “troublemakers,” Osborne threatened Greene’s exercise of her protected rights and committed an unfair labor practice under § 7116(a)(1) of the Statute.

The GC argues that Greene’s testimony should be credited, based on her “specific recollection” of Osborne’s statements and her “demeanor at the hearing.” GC Br. at 10. Further, the GC argues that Greene’s recollection of events in the “Report of Contact” supports a conclusion that Greene recalled events accurately while on the witness stand. As for the Agency’s witnesses, the GC asserts that Osborne claimed to be acting out of concern for Greene’s safety but was in fact concerned only with backing Conner up “100 percent.” *Id.* at 11. Conner’s credibility is also questionable, since he had “unresolved personal differences” with Greene. *Id.* at 10-11. The GC suggests that Conner was not even present during the conversation between Osborne and Greene, since neither woman noted his presence in their own testimony, and it is unlikely that Osborne would have discussed such a sensitive matter in front of Conner. *Id.* at 11.

Respondent

The Respondent argues that even if Osborne made the “no good” and “troublemaker” remarks, they did not violate the Statute. R. Br. at 8 (citing *U.S. Dep’t of Justice, Fed. Bureau of Prisons, FCI, Elkton, Ohio*, 62 FLRA 199 (2007) (*FCI Elkton*); *Dep’t of HHS, Soc. Sec. Admin.*, 23 FLRA 648, 657 (1986) (*SSA*)). More fundamentally, however, the Respondent insists that Osborne did not make the statements attributed to her by Greene. R. Br. at 4. In this regard, Osborne denied making these statements, and Conner corroborated her testimony. In addition, the Respondent argues that Greene was not a reliable witness, because her response to Osborne’s inquiry and her version of the events “simply make no sense.” *Id.* at 6. Greene’s perception of being harassed was unreasonable, and it casts doubt on the accuracy of her entire testimony.

ANALYSIS AND CONCLUSIONS

It is an unfair labor practice under § 7116(a)(1) of the Statute for an agency to interfere with, restrain, or coerce any employee in the exercise of rights under the Statute. As the Authority explained in *U.S. Dep’t of Transp., FAA*, 64 FLRA 365, 370 (2009):

The standard for determining whether management's statement or conduct independently violates § 7116(a)(1) is an objective one. The question is whether, under the circumstances, the statement or conduct tends to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement. Although the circumstances surrounding the making of the statement are considered, the standard is not based on the subjective perceptions of the employee or on the intent of the employer.

(internal citations omitted); *see also U.S. Dep't of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Ctr., Robins AFB, Ga.*, 66 FLRA 589, 591 (2012). For instance, the Authority found a manager's statement coercive when she said that an employee had "become nothing but a troublemaker" since becoming a union steward. *U.S. Air Force, Lowry Air Force Base, Denver, Colo.*, 16 FLRA 952, 960 (1984); *see also EEOC, San Diego Area, San Diego, Cal.*, 48 FLRA 1098, 1107 (1993) (EEOC).

Here, Greene accused Osborne of harassing her and indicated to Osborne that she would report this harassment to the Union. If Osborne indeed responded by saying that the Union "isn't any good" and that employees who "run to the Union" are "troublemakers," that statement would indicate that employees exercising their rights (by seeking the Union's assistance regarding workplace problems, for instance) would suffer adverse consequences (losing the esteem of managers and supervisors). As the Judge said in *IRS*, such a comment by a supervisor "would be interpreted by a reasonable employee as a display of management hostility" toward protected activity and would make an employee "think twice" before engaging in such activity. 11 FLRA at 298. This is particularly true of the alleged comment that "we" call people who "run to the Union" "troublemakers." While the alleged comment about the Union not being "any good" might not, by itself, violate 7116(a)(1), it certainly does, in combination with the "troublemaker" remark.

Respondent cites two decisions to support its claim that Osborne's alleged comments were not coercive. Although these decisions indicate that intemperate language is not necessarily coercive, neither stands for the proposition that such language is never coercive. *FCI Elkton*, 62 FLRA at 201; *SSA*, 23 FLRA at 657. Rather, it is the unique circumstances of each case which illuminate the potentially coercive implications of a supervisor's remark. And in the circumstances of this case, Osborne's alleged statement to Greene can only be interpreted as an attempt to discourage Greene from contacting the Union. Accordingly, if I believed Greene's testimony, I would find that Osborne and the Respondent violated § 7116(a)(1) of the Statute. However, the weight of the evidence convinces me that Osborne did not make the statements attributed to her by Greene.

First, the difficulty of the General Counsel's burden of proof in this case must be acknowledged. This is not simply a case of a bargaining unit employee saying one thing, and a supervisor denying it; rather, one employee's testimony is contradicted by a supervisor and a second bargaining unit employee. Evidence is not measured simply by the number of witnesses, but when a supervisor is alleged to make anti-union coercive statements, those statements threaten not only the employee talking to her, but all employees who might

consider consulting with the Union about workplace problems. While Osborne may have been talking to Greene at that particular time, the threat of being branded a “troublemaker” could just as easily apply to Conner. If Conner heard Osborne make such a statement to Greene, I think it is unlikely that he would lie about it and support Osborne. If the GC is going to prove that Osborne indeed made this coercive statement, it must show not only that Osborne lied to protect herself, but also that Conner lied against his own interests.

It is very difficult for me to accept Greene’s allegations against Osborne, because her response to Osborne’s inquiry seems so incongruous and inappropriate. There is no evidence that Osborne disliked Greene, or that the two had a contentious relationship. And while there is no evidence to suggest that Osborne was primed to quarrel with Greene on December 21, it is apparent that Greene’s suspicions about Conner, and her defensiveness about the phone calls Conner was receiving, primed Greene for a quarrel. Tr. 16, 37; see also GC Ex. 2 at 2. When Osborne met with Conner before talking with Greene, Conner did not claim that Greene had been doing anything improper, and there is no concrete evidence that Conner said anything that would lead Osborne to be angry with Greene or, for that matter, with the Union. Tr. 59. Further, it is clear that when Osborne went to talk to Greene, she emphasized her concern with Greene’s safety and the safety of the Medical Center. Osborne knew of nurses who had been violently attacked, and Greene acknowledged at the hearing that Osborne had shared these concerns with her. Tr. 21; GC Ex. 2 at 1. The fact that Osborne was unaware that her concern for Greene might have come across to Greene as intrusive, while unfortunate, nevertheless supports a conclusion that Osborne was preoccupied with solving the problem of the (perceived) danger posed by the anonymous caller. Tr. 63-64. Osborne said nothing to Greene to suggest she was blaming Greene for the anonymous calls, but it is clear from Greene’s testimony that she feared Conner and Osborne were ganging up on her to get her into trouble. Tr. 33, 37, 40. Thus, when Greene accused Osborne of harassing her and said she was going to report it to the Union, Osborne was taken aback (“I’m concerned about the woman’s wellbeing, and she comes back with I’m going to contact the . . . Union[.]”) and baffled (it was as if they were having “two different conversations”); but there is no indication that Osborne raised her voice, became angry, or lost her composure. Tr. 50-51.

My distrust of Greene’s perceptions is heightened by her testimony regarding the Conner-Osborne meeting that immediately preceded the Osborne-Greene conversation. According to Greene, Conner walked over toward Osborne’s office³ to tell her about the anonymous phone calls coming in for Greene, prompting Osborne to tell him “however he wanted to handle the situation that she would back him 100 percent.” Tr. 20. When asked what else she heard them say, Greene testified, “That’s all I heard her tell him.” *Id.* Despite hearing only this one comment – whose meaning is far from clear – Greene became fearful that “they could go to my supervisor or . . . write me up . . . to make it look like I was causing trouble.” Tr. 37. Greene admitted that she didn’t have “the slightest idea what [Conner]

³ Both Osborne and Conner testified, and I agree, that this conversation occurred not in the hallway but in Osborne’s office, about twenty-five feet away from the nurse’s station where Greene was located. Tr. 48, 84.

wanted to do.” *Id.* But it was this isolated snippet of a comment from an overheard conversation which lingered in Greene’s mind when Osborne approached her about the anonymous phone calls and expressed her concern for Greene’s safety. Instead of thanking Osborne for her concern, or asking Osborne what she meant about “backing” Conner “100 percent,” Greene was convinced that “she [Osborne] was on Dan’s side” and that she was being “harassed” and “threatened.” Tr. 22. It is my impression, from the testimony of all the witnesses, that Greene totally misunderstood the conversation between Osborne and Conner, and that misunderstanding distorted her understanding of what occurred next.

While both Osborne and Conner testified that Osborne didn’t tell him that she would back him 100 percent (Tr. 60, 85), they both indicated that Conner consulted Osborne because he was unsure whether the VA police should be notified of the anonymous calls. Tr. 49, 58-59, 79. Most likely, Osborne told Conner something to the effect that she would support Conner by passing along his safety concerns to Greene, and that she would recommend that Greene report the calls to the police. That is essentially confirmed by Osborne’s subsequent actions. Her remark to Conner may have sounded something like “backing Conner,” but it was not an indication that she would “take Dan’s side” against Greene or gang up with him to “make it look like” Greene was causing trouble. But this was Greene’s frame of mind even before Osborne spoke to her, and her misapprehensions about Osborne’s motives prevented her from accurately understanding what Osborne was saying and doing.⁴

It is important to emphasize, however, that Greene was fully entitled to contact the Union and seek its protection, regardless of whether her fears of harassment were well-grounded or not. Even if Greene overreacted to Osborne’s inquiry, Osborne would not have the right to warn Greene against going to the Union or to call people who consult the Union troublemakers. But Greene’s behavior on December 21, and her testimony describing the behavior and statements of Osborne and Conner, suggest a misunderstanding on her part that renders her version of the events less credible than that of Osborne and Conner.

It is therefore much more likely that Osborne responded to Greene’s statement about bringing the matter to the Union by saying, “Yeah, sure. That’s fine,” (Tr. 50, 51), than by lashing out and saying that the Union “isn’t any good” and that employees who seek its assistance are “troublemakers.” Further, I do not believe that Osborne would have made such

⁴ Another example of the implausibility of Greene’s testimony is her explanation of why she thought Osborne was harassing her: “[T]he way she was glaring at me with that hateful look, I just felt like I was in a hostile environment and I just felt like I was being harassed . . .” Tr. 40. Greene’s descriptions of Osborne do not match the reality of what was happening. Osborne was trying to impress upon Greene that she might be in danger and that she should contact the police, while Greene was criticizing Conner for “screening” her phone calls. Tr. 21. By echoing Conner’s concerns about Greene’s safety, Osborne was (in Greene’s mind) “taking Dan’s side.” Tr. 22. It is inconceivable to me that Osborne would have been “glaring” at Greene with a “hateful look” during this conversation. Greene was totally misunderstanding what Osborne was saying.

crude anti-union remarks in front of Conner, a bargaining unit employee, in the middle of Unit 4A. These factors support a conclusion that Osborne and Conner were telling the truth when they testified that Osborne did not make the alleged statements.

The GC attempts to bolster Greene's testimony via Greene's Report of Contact. GC Ex. 2. Though the Report of Contact is consistent with Greene's testimony, the document is no more reliable than the underlying testimony. Saying the same thing twice does not make it more believable. I do not believe that Greene was fabricating her testimony; rather, I believe that she did not understand the events and statements of December 21 correctly.

The General Counsel argues that Conner is not a credible witness, but these arguments are unconvincing. First, the GC claims that Conner cannot be trusted because he had "unresolved personal differences" with Greene. GC Br. at 10-11. Conner acknowledged that he was at times frustrated with Greene (Tr. 80-83), but this acknowledgement strengthens, rather than weakens, his credibility. Additionally, his testimony is consistent with that of Osborne, who did not have any "unresolved personal differences" with Greene. Whatever frustration Conner may have felt about nurses serving as the "secretary for the secretary," (Tr. 73), I do not see any evidence that he transposed that frustration to cover up a threat against a fellow bargaining unit employee.

Based on the foregoing, I find that the General Counsel failed to prove that Osborne told Greene that the Union wasn't "any good," that employees who "run to the Union" are deemed "troublemakers," or that Osborne said any coercive remarks to Greene. Therefore, I find that the GC has failed to prove that the Respondent committed an unfair labor practice in violation of § 7116(a)(1) of the Statute.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

It is ordered that the Complaint be, and hereby is, dismissed.

Issued, Washington, D.C., July 30, 2015



RICHARD A. PEARSON
Administrative Law Judge