

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
ADMINISTRATIVE LAW JUDGES

OFFICE OF
WASHINGTON, D.C. 20424

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2082, AFL-CIO
Respondent

and

HARRY W. JOHNSON, III, AN INDIVIDUAL
Charging Party

Case No. SF-CO-20199

William D. Fraser Mack McLeod For the Respondent
John R. Pannozzo, Jr., 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 a charge filed on January 14, 1992 by Mr. Harry W. Johnson, III, an individual, (hereinafter called the Charging Party or Mr. Johnson), a Complaint and Notice of Hearing was issued by the Regional Director of the San Francisco Regional Office, Federal Labor Relations Authority, San Francisco, California on May 14, 1992. The Complaint, which was amended without objection at the hearing, alleges that the American Federation of Government Employees, Local 2082, AFL - CIO, (hereinafter called the Respondent or Union), violated Section 7116(b)(1) of the Federal Service Labor - Management Relations Statute, (hereinafter called the Statute), by (1) confiscating a number of petitions to decertify the Union as the exclusive representative of the bargaining unit at Headquarters, 7th Infantry Division (Light), Fort Ord, California, and (2) interrogating an employee concerning his decertification activities.

A hearing was held in the captioned matter on June 24, 1992, in San Francisco, California. All parties were afforded the opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted posted hearing briefs on August 6 and 7, 1992, respectively, 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

On or about August 16, 1991, Mr. Johnson, who had been President of Local 2082 since June 1990, prepared a decertification petition because he felt that the American Federation of Government Employees (AFGE) District and National Offices had not been supplying sufficient support to Local 2082 in connection with contract negotiations being conducted by the Local. According to Mr. Johnson, he had been receiving more support from a rival union located at Monterey, California than he received from AFGE. The petition which was directed to the "Federal Labor Relations Authority" from the "Fort Ord Bargaining Unit Employees"

stated as follows:

We the undersigned employees assert that AFGE Local 2082 (The Union), the currently recognized, or certified labor organization no longer represents a majority of the employees in the unit. We the undersigned recommend that this labor organization be decertified in accordance with 5 U.S.C. 7111, and provide this petition in support of DR - DECERTIFICATION OF EXCLUSIVE REPRESENTATION PETITION FLRA Form 21.

Mr. Johnson placed the petitions in various areas throughout Fort Ord, California where the unit employees worked. He also gave a number of petitions to Mr. Lyndle Pangle who at the time was a Local 2082 shop steward. Between August 16, 1991 and approximately October 15, 1991, according to Mr. Johnson, he collected approximately 24 names on the petitions that he had been circulating. In this connection, Mr. James Fisher, Chief of the Management Employee Relations Branch and Labor Relations Officer at Fort Ord, testified that on September 11, 1991, during a discussion in his office, he was shown a decertification petition by Mr. Johnson which had a number of signatures thereon.

On or about October 15, 1991, Mr. Johnson attended a meeting at the Local 2082 office located on the base. In attendance at the meeting were Mr. Fred Aguas, Acting Union Treasurer, Mr. Geronimo Beltrane, Acting Chief Steward, Mr. Gilbert Cortez, Acting Vice President, and Ms. Judy Mohr, National Representative of American Federation of Government Employees, AFL - CIO, who had been recently appointed Trustee of Local 2082 at Fort Ord.

Ms. Mohr began the meeting by handing out letters from Mr. John Sturdivant, President of AFGE, wherein Local 2082 was placed in trusteeship and Ms. Mohr was named trustee. She then proceeded to remove all the individuals who were present from their current positions in Local 2082 and collect their keys to the Local 2082 office.

Following the removal of the officers from their respective positions, according to Mr. Johnson, Ms. Mohr then turned to him and said, "I understand there's decertification petitions floating around this base, and I understand you're responsible for it. I want them and I want them now. This is not the way this local or this union does business." Mr. Johnson then asked why he had to surrender the petitions, and she replied "because I'm in charge". Whereupon, Mr. Johnson opened his brief case and took out five petitions, two of which were totally signed and another partially signed. According to Mr. Johnson, the petitions surrendered to Ms. Mohr contained about twenty four signatures. Further, according to Mr. Johnson, Ms. Mohr then stated that she did not want to see any more of these things going around the post. When Ms. Mohr asked whether there were any more petitions around, he pointed to the top of a cabinet where there were a number of blank petitions. Ms. Mohr took possession of the petitions and then asked if anybody else had any petitions. Mr. Thompson replied that Mr. Lyndle Pangle had a few.

Finally, according to Mr. Johnson, that while no threats were made by Ms. Mohr, he turned the petitions over to her because he was not sure of his legal standing and figured it was better to be safe than sorry and that he could file an action later. Thereafter, he ceased circulating the decertification petitions.

According to Mr. Pangle, at a meeting in the Local 2082 office around the beginning of September 1991, he had a discussion with Mr. Johnson concerning, among other things, the necessity of getting additional members into Local 2082. It was agreed, that by passing around a decertification petition they might scare people into joining the Union. This would be accomplished by first asking employees whether they wanted to get rid of the Union. If the employee said no, then he, if not already a member, would be given an application for membership in the Union and be requested to fill it out. The record indicates that he obtained seven signatures on the decertification petition in his possession.

Mr. Pangle further testified that during the middle of October 1991, he had a discussion with Ms. Mohr at Local 2082's office on the base. In attendance were Mr. Johnson, Mr. Beltrane, Mr. Cortez and Mr. Aguas. Ms. Mohr told him about the trusteeship and asked if he was one of the people that had been passing around the decertification petitions. He said that he was and that he had been using the decertification petition as a tool to solicit union membership. Ms. Mohr then stated that "the national was not going to support a decertification petition of the AFGE, and that she wanted all the decertification petitions that I had, signed or unsigned". Mr. Pangle did not surrender the petitions in his possession and according to his testimony he was not intimidated by Ms. Mohr.

Finally, according to Mr. Pangle, when he received the decertification petitions from Mr. Johnson on or about September 1991, it was his impression that they were both going to use the decertification petitions as a tool to obtain membership in the Union.

Mr. Gilbert Cortez, who at the time of the hearing was Acting President of Local 2082, testified that he met Mr. Johnson in Local 2082's office and was shown a decertification petition. At the time Mr. Johnson told him in response to a question concerning the legality of the decertification petition that he was using the petition as a bluff in order to get employees to join the Union. Mr. Cortez further testified that he never attempted to get any employee to sign a decertification petition. 2

Ms. Mohr testified that after she had told Mr. Johnson and the other officers of Local 2082 that the Local was in trusteeship and that they were no longer in office, she asked Mr. Johnson what the decertification petitions, which she had seen in the office, were all about. According to Ms. Mohr who admits having knowledge of the petitions prior to her arrival at the Fort, Mr. Johnson informed her that they were being used as a scare tactic to get people to join the Union. Ms. Mohr then asked "are you saying that you are using this to organize?" Upon receiving an affirmative response, Mr. Mohr told him that she had an extensive background in organizing and that she had never "been led to believe that you organize by decertifying a union". When Mr. Johnson stated that he was using the petition to scare the employees, Ms. Mohr, further testified that she told him "that I'm the appointed trustee, I am not going to use this manner in which to organize and we're not going to decertify the local in order to gain membership. So I'm asking that we cease and desist this type organizing under my appointment." Thereupon she trashed the petitions that were in Local 2082's office. She does not recall whether Mr. Johnson gave her any other petitions, but acknowledges that he might have. However, she denies that any of the petitions bore signatures. According to Ms. Mohr, she had a similar conversation later in the day with Mr. Pangle.

Discussion and Conclusions

The General Counsel takes the position that the Union violated Section 7116(b)(1) of the Statute by virtue of the actions of its agent, Ms. Mohr, since such actions interfered with, restrained and coerced Mr. Johnson, Mr. Pangle and the signatories to the decertification petitions in the exercise of their rights guaranteed by Section 7102 of the Statute, namely the right to remove the Union as the exclusive representative of the employees at Fort Ord. With regard to the signatories, it is the General Counsel's position that the employees would in the future be hesitant to sign a decertification petition for fear that the Union would be aware of, and be displeased with, their actions.

The Union, on the other hand, takes the position that no violation of the Statute occurred because Ms. Mohr was acting within her legal authority when she discontinued the use of decertification petitions as a ploy or tool to obtain membership in the Union. Thus, it appears to be the position of the Union that it has the right to decide the methods by which union organizing should be accomplished.

Section 7102 of the Statute gives employees the right to form, join or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal. To the extent that a union interferes

with, restrains or coerces employees in the exercise of the rights accorded by Section 7102, such union action is violative of Section 7116(b)(1) of the Statute.

Based upon the foregoing, I find, and I do not understand any party to be of a contrary view, that the circulation of a decertification petition falls within the employees' rights set forth in Section 7102 of the Statute. Cf. National Association of Government Employees; National Association of Government Employees, Local R12-35, 14 FLRA 452; United Union of Roofers, Waterproofers and Allied Workers Local No. 81.(Beck Roofing Company, Inc.), 294 NLRB 285, enf. 135 LRRM 2477, (9th Cir. 1990) wherein the National Labor Relations Board applying a similar provision reached a similar conclusion under the National Labor Relations Act.

In the subject case we have two separate instances where the Union admittedly intruded into the circulation of decertification petitions. In the first instance we have an employee, i.e. Mr. Johnson, who at the time was President of Local 2082, circulating a decertification petition for purposes of removing the Union as the exclusive representative of the employees. In the second instance we have Mr. Pangle, while a Union Steward, admittedly circulating a decertification petition for purposes of achieving membership in the Union. Ms. Mohr acknowledges interrogating Mr. Johnson and Mr. Pangle with regard to their actions in circulating decertification petitions, demanding the petitions and informing them that they should cease such activity since the Union did not approve of using decertification petitions as a means of achieving union membership.

Contrary to the contention of the Union, I can not find upon the basis of the instant record that Mr. Johnson, like Mr. Pangle, was using the decertification petition as a vehicle to achieve membership in the Union. Thus, his credited testimony indicates that he prepared the decertification petitions because he was dissatisfied with the support he had been receiving from the National Office in connection with negotiations being conducted by Local 2082. Additionally, he left a number of unattended decertification petitions throughout the various offices where unit employees worked. If he had indeed been using the petitions as a device to increase union membership, the unattended decertification petitions, without more, certainly would not have achieved that result. Accordingly, I find that Mr. Johnson's sole motive in preparing and circulating the decertification petitions was to remove the Union as the exclusive representative. Further, based upon the credited testimony of Mr. Johnson and the corroborating testimony of Mr. Fisher, I find that Mr. Johnson had been successful in obtaining a number of signatures on the decertification petitions and that he surrendered such signed petitions to Ms. Mohr.

The record evidence further establishes that on or about October 15, 1991, following Ms. Mohr's action in removing Mr. Johnson and the other officers from their respective positions in Local 2082, Ms. Mohr approached Mr. Johnson and demanded the decertification petitions in his possession. When Mr. Johnson asked why he had to surrender the petitions, Ms. Mohr stated "because I am in charge". Whereupon, Mr. Johnson, not being sure of the legality of his position, opened his brief case and surrendered the signed petitions in his possession. Further, in reply to Ms. Mohr's inquiry concerning the existence of other petitions, Mr. Johnson pointed to a pile of petitions on top of a file cabinet and also informed her that Mr. Pangle had a number of petitions in his possession.

Based upon the above recapitulation of the pertinent facts concerning the October 15, 1991 meeting between Mr. Johnson and Ms. Mohr wherein the decertification activity of Mr. Johnson was discussed, I find that the Union, through its agent Ms. Mohr, interfered with, coerced and restrained Mr. Johnson in the exercise of his right to engage in the circulation of a decertification petition.

In reaching this conclusion, I have taken into consideration the fact that Ms. Mohr might well have been operating under the impression that Mr. Johnson, like Mr. Pangle, had been using the petition as a vehicle to achieve union membership. However, since such was not the case, her activities not only interfered with the rights of Mr. Johnson and the signatories to the decertification petition, but resulted in the destruction of the

petition and abandonment of Mr. Johnson's efforts to remove the Union as the exclusive representative of the employees. 3 In such circumstances, I find that the Union violated Section 7116(b)(1) of the Statute.

Turning now to the October 15, 1991 incident involving Mr. Pangle and Ms. Mohr, I find, contrary to the contention of the General Counsel, that the Union did not violate Section 7116(b)(1) of the Statute by virtue of the activities of Ms. Mohr. In reaching this conclusion it is noted that Mr. Pangle, unlike Mr. Johnson, was admittedly using the decertification petition for reasons other than to remove the Union from its position as exclusive representative. In fact the sole reason for utilizing the decertification petition, according to Mr. Pangle, was to achieve memberships in the Union. While, as indicated above, I have found the circulation of a decertification petition to remove the "in-union" to be a protected right under Section 7102 of the Statute, I can not find that use of a decertification petition solely as a ploy to achieve membership in the Union is entitled to equal protective status.

Not only does such action confuse and frustrate the intent of the employees who opt to become signatories to the petition but it abuses the Authority's processes. Moreover, since the use by Mr. Pangle of the decertification petition was admittedly solely for purposes of achieving membership in the Union, it follows that the Union was within its rights in attempting to dictate the manner in which membership organizational drives should be conducted. To this end, when Ms. Mohr ordered Mr. Pangle to cease using the decertification petition as a vehicle to achieve membership I find, as noted above, that she did not infringe upon any of the rights enumerated in Section 7102 of the Statute and thereby commit an additional Section 7116(b)(1) violation of Statute.

With respect to alleged illegal interrogation of Mr. Pangle, I find that under all the circumstances, particularly the fact that all parties were aware of how Mr. Pangle was utilizing the petitions, that the Union did not violate the Statute when Ms. Mohr asked Mr. Pangle if he was one of the people circulating the petition.

Having found that the Union's sole violation of Section 7116(b)(1) of the Statute occurred when it confiscated the decertification petitions in Mr. Johnson's possession, it is hereby recommended that the Authority issue the following order designed to effectuate the purposes and policies of the Act.

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 American Federation of Government Employees, Local 2082, AFL - CIO shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing employees represented by the American Federation of Government Employees, Local 2082, AFL - CIO, (AFGE), from seeking an election to decertify AFGE as the exclusive representative of such employees by confiscating decertification petitions from Harry W. Johnson, III.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of rights assured them by the Federal Service Labor - Management Relations Statute.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Statute:

(a) Post in the office(s) of the AFGE at Headquarters, 7th Infantry Division (Light), Fort Ord, California, 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 AFGE Trustee Judy Mohr 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 of the San Francisco Regional Office, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103, in writing, within 30 days from the date of this order, as to what steps have been taken to comply.

Issued, Washington, DC, September 30, 1992

BURTON S. STERNBURG

Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER 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 MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT interfere with the right of employees represented by the American Federation of Government Employees, Local 2082, AFL - CIO, (AFGE), to seek an election to decertify AFGE as the exclusive representative of such employees by confiscating decertification petitions from Harry W. Johnson, III.

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

_____ (Activity)

Dated: _____ 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 of the Federal Labor Relations Authority, San Francisco Regional Office, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103 and whose telephone number is: (415) 744-4000.

FOOTNOTES

Footnote 1 The Union is "the certified exclusive representative of employees of Headquarters, 7th Infantry Division (Light), Ft. Ord, California".

Footnote 2 Although the record is not clear on this point, it appears that his conversation took place in early or mid-September 1991.

Footnote 3 Compare National Association of Government Employees, supra, where there was no showing that the union, other than requesting employees by letter to destroy any decertification petition that they may come across, took no further action in support of the request.