

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2437, DALLAS, TEXAS Respondent and VETERANS AFFAIRS MEDICAL CENTER DALLAS, TEXAS Charging Party	Case No. DA-CO-60423

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **MARCH 31, 1997**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 25, 1997
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: February 25, 1997

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2437, DALLAS,
TEXAS

Respondent

and

Case No. DA-CO-60423

VETERANS AFFAIRS MEDICAL CENTER
DALLAS, TEXAS

Charging Party

Pursuant to Section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2437, DALLAS, TEXAS Respondent and VETERANS AFFAIRS MEDICAL CENTER DALLAS, TEXAS Charging Party	Case No. DA-CO-60423

Donald W. Hill, Esquire
For the Respondent

Catherine A. Rich, Esquire
For the Charging Party

Susan E. Jelen, Esquire
William D. Kirsner, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns a very simple question: Did a union representative at a new employee orientation meeting, make statements which created the impression that non-members seeking the Union's assistance would not receive the same quality of representation in dispute with the agency as
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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (b) (1) will be referred to, simply, as, "\$ 16(b) (1)."

Union members. For reasons fully set forth hereinafter, I have found that he did.

This case was initiated by a charge, filed on April 30, 1996 (G.C. Exh. 1(a)), which did not assert that any subsection of § 16(b) or (c) was alleged to have been violated, and a First Amended Charge, filed on September 27, 1996 (G.C. Exh. 1(c)), which alleged violations of §§ 16(a) (1) and (8). The Complaint and Notice of Hearing (G.C. Exh. 1(e)) issued September 30, 1996, alleged violation of § 16(b)(1) only, and set the hearing for November 6, 1996, pursuant to which, a hearing was duly held on November 6, 1996, in Dallas, Texas, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument, which Respondent exercised. At the conclusion of the hearing, December 6, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief, received on December 9, 1996, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

FINDINGS

1. The American Federation of Government Employees (AFGE) is the exclusive representative of a consolidated unit of employees of Department of Veterans Affairs, including employees at the Veterans Affairs Medical Center, Dallas, Texas (VAMC).

2. American Federation of Government Employees, Local 2437 (hereinafter, "Union"), is an agent of AFGE for the representation of employees at VAMC.

3. VAMC conducts an orientation session for new employees on the first Friday of each month. Speakers from various components and organizations, including the Union, appear to make presentations to the employees. Mr. Walter McCullough, a therapy aide in the mental health department of VAMC, is Executive Assistant to the President of the Union, Mr. Andrew Brumsey, and one of his responsibilities is to make the presentation for the Union at the new employee orientations (Tr. 96). Mr. McCullough has made the Union presentation for three or four years (Tr. 97); but uses no script, although he has a mental outline of things he wants to cover in the allotted time of 15 to 20 minutes (Tr. 97).

4. A new employee orientation session was held on April 5, 1996, and Mr. McCullough made the presentation for the Union. Three employees who were present, Mr. Sammy D'Amico², an accounting technician (Tr. 9); Ms. Linda Sue Terrell, a nurse manager newly arrived [April 1, 1996] from the VA Medical Center in Muskogee, Oklahoma (Tr. 49, 50); and Ms. Mary Katherine Garrett, Chaplin (Tr. 69, 70), each credibly testified that Mr. McCullough made statements which created the impression that non-members of the Union seeking Union assistance would not receive the same quality of representation in disputes with VAMC as Union members. Thus, Mr. D'Amico stated that Mr. McCullough said, inter alia, ". . . if you've been watching the news lately, you would see we had two people from the Bio-Med area that were having trouble . . . and you see where if they had been dues-paying members, that they would -- the union would be able to help them." (Tr. 13); He said . . . that if you were not a dues-paying member and you had trouble, if you needed help, that the union might be able to get to you, but it would be after they took care of all the dues-paying members, you know, first." (Tr. 13); ". . . that sometime in the future, if they hadn't had occasion up to that point in their VA careers, that before it was over with, that they were going to need representation from the union against corrupt management. He also said that you get what you pay for, that if you were not a dues-paying member of the union, then you might get representation, but you'd be down the ladder; they would take care of the other problems first, dues-paying members first." (Tr. 24)

Mr. D'Amico stated that Mr. McCullough's comments were not in reference to matters such as: insurance benefits, scholarship program, or credit cards; but related to representation employees would need against VAMC (Tr. 15).

Ms. Terrell stated, inter alia, that, ". . . I had worked with the union many times in the past at different VA and also Indian Health Service . . . This particular union rep that spoke at the meeting inferred that you needed to belong to the union in order to get proper representation." (Tr. 52); ". . . He went on to say that specifically you get what you pay for." (Tr. 53); and his statement referred to, "Any type of representation that required a management-employee relation." (Tr. 53). Ms. Terrell stated that she was struck by the Union

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Mr. D'Amico, also, is President of the VA Employee Association, which is a social activities group to which every employee of VAMC automatically is a member and for which there are no dues. He was present to make a presentation for VA Employee Association.

representatives' statements on April 5, 1996, because in her prior experience with the VA in Oklahoma, she knew that the union had represented non-union members (Tr. 52).

Ms. Garrett testified, inter alia, ". . . I remember the words, You get what you pay for, and that if representation was going to be there, it would be -- the people paying the dues would be considered over people who didn't pay dues." (Tr. 73).

5. I also found Mr. McCullough a credible and forthright witness; but he couldn't remember what he said on April 5, 1996. He conceded that he did, indeed, say, "You get what you pay for" (Tr. 104); but contended he used it in the sense that, "If you're not a member, you can't enjoy the benefits." (Tr. 104).

When asked if he discussed the quality of representation provided to union versus non-union members (Tr. 104), this was his response:

"A If I did, I can't recall in detail what I might have said, other than if we don't have the money to pay attorneys, then we can't represent employees very well." (Tr. 104).

Mr. McCullough further stated:

"A The only thing I remember communicating to people at the orientation session is that we want every bargaining unit member, every -- really every employee if we can get them to join the union, to become dues-paying members, if it ain't nothing for more than just the benefits, you know, these sideline benefits.

"But this makes us stronger financially; therefore, we're able to, you know, take care of cases. And if we don't have the money, then what can we do? You know, you're not going to get representation, good representation, for the simple reason you can't afford it" (Tr. 106).

Mr. McCullough further stated:

"Q Did you tell employees that if we don't have dues-paying members, that employees -- there won't be any money to hire attorneys?

"A That sounds more like what I might have been referring to.

"Q What you might have said?

"A If we don't have the money to pay attorneys, then we don't get -- you know, we don't get good representation. That's true." (Tr. 112).

CONCLUSIONS

As set forth above, I find that Mr. McCullough, speaking on behalf of the Union, at the new employee orientation on April 5, 1996, did make statements which created the impression that non-members of the Union seeking Union assistance would not receive the same quality of representation in disputes with VAMC as Union members and thereby violated § 16(b)(1) of the Statute. American Federation of Government Employees, Local 1778, AFL-CIO, (1982). Here, Mr. McCullough first asserted that he used the term "You get what you pay for", in reference to non-representational services such as insurance and credit cards (Tr. 104); but later acknowledged that he may have referred to representation of employees (Tr. 104-105). While Mr. McCullough said the Union provided representation for non-union members in grievances (Tr. 105-106), he conceded he did not say in what areas the Union represented them regardless of their Union status (Tr. 104-105). Indeed, he said he never talks about specific things such as Merit Systems Protection Board, EEO Appeals, or some of the terms of the collective bargaining agreement because, "I never have time" (Tr. 100); that he doesn't encourage questions about their rights under the collective bargaining agreement, because, "I don't have that kind of time" (Tr. 100).

As the Authority has made clear,

"The standard for determining whether a union's statement violates section 7116(b)(1) of the Statute is an objective one. The question is whether, under the circumstances, employees could reasonably have drawn a coercive inference from the statement. . . . the standard for a section 7116(b)(1) violation is not based on the subjective perceptions of the employees or on the intent of the speaker. . . ." American Federation of Government Employees, Local 987, Warner Robins, Georgia, 35 FLRA 720, 724 (1990).

Having found that the Union violated §§ 16(b)(1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the American Federation of Government Employees, Local 2437, Dallas, Texas, shall:

1. Cease and desist from:

(a) Creating the impression that non-members of the Union will not receive the same quality of representation as provided Union members in grievances and unfair labor practices.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) At all new employee orientation sessions at which the Union makes a presentation, notify the employees that the Union will fairly represent all bargaining unit employees in grievances and unfair labor practices without regard to Union membership.

(b) Post at its local business office, at its normal meeting places, and all other places where notices to members and to employees of the Veterans Affairs Medical Center, Dallas, Texas, are customarily posted, 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 President of the American Federation of Government Employees, Local 2437, 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 by the American Federation of Government Employees, Local 2437, to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Submit appropriate signed copies of the Notice to the Director, Veterans Affairs Medical Center, Dallas, Texas, for posting in conspicuous places where unit

employees represented by the American Federation of Government Employees, Local 2437, are located. Copies of the Notice should be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to § 2423.30, 5 C.F.R., § 2423.30, of the Authority's Rules and Regulations, notify the Regional Director of the Dallas Region, Federal Labor Relations Authority, 525 Griffin Street, Suite 926, LB-107, Dallas, TX 75202-1906, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 25, 1997
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the American Federation of Government Employees, Local 2437, Dallas, Texas, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify all bargaining unit employees that:

WE WILL fairly represent all employees within the certified bargaining unit and will represent all bargaining unit employees in grievances and unfair labor practices before management without regard to Union membership.

WE WILL, at all new employee orientation sessions at which we make a presentation, notify the employees that WE WILL fairly represent all employees within the certified bargaining unit and that WE WILL represent all bargaining unit employees in grievances and unfair labor practices before management without regard to Union membership.

WE WILL NOT create the impression that non-member unit employees seeking our representation of their interests will not receive the same quality of representation as is provided unit employees who are members of the Union.

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

(President, AFGE,

Local 2437)

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 of the Federal Labor Relations Authority, Dallas Region, whose address is: 525 Griffin Street, Suite 926, LB-107, Dallas, Texas 75202-1906, and whose telephone number is: (617) 424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DA-CO-60423, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Donald W. Hill, Esquire
White Hill Sims & Wiggins, L.L.P.
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National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: February 25, 1997
Washington, DC