

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO, LOCAL 916

Respondent

and

Case No. 76-CO-10038

JUNE A. MESARICK

Charging Party

Mr. Jimmie D. Green For the Respondent

Bruce Conant, Esquire Matthew L. Jarvinen, 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. <sup>(1)</sup>, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns an alleged statement by the Union President to the charging party, to the effect, that if she filed an unfair labor practice charge her grievance would be dropped.

This case was initiated by a charge filed on June 12, 1991 (G.C. Exh. 1(a)), which alleged violations of §§ 16(b) (1), (2), (3), (5) and (6) of the Statute. The Complaint and Notice of Hearing issued on May 28, 1992 (G.C. Exh. 1(b)), alleged violation of § 16(b)(1) only and set the hearing for August 28, 1992, at a time and place in Oklahoma City, Oklahoma, to be designated later. By Order dated June 15, 1992 (G.C. Exh. 1(d)) the time and place of the hearing was set and, pursuant thereto, a hearing was duly held on August 28, 1992, in Oklahoma City, Oklahoma, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issue involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, pursuant to the request of Respondent to which General Counsel had no objection, October 14, 1992, was fixed as the date for mailing post-hearing briefs. General Counsel timely mailed a brief, received on October 19, 1992, which has been carefully considered. Respondent on October 28, 1992, mailed a brief, received on November 2, 1992. As Respondent's brief was not timely mailed it is rejected and has not been considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions.

1. The Respondent, American Federation of Government Employees, AFL-CIO, Local 916 (hereinafter, "Union"), is the exclusive representative of a bargaining unit of employees at the Oklahoma City Air Logistics Center, Tinker Air Force Base (hereinafter, "Tinker AFB").

2. The Charging Party, June A. Mesarick, is employed at Tinker AFB as a GS-7 Supply Technician, having worked herself up from a GS-2 Clerk-typist to her present job which is to research requisitions for aircraft parts.

3. Although employed by the Air Force for more than 20 years and having received fully satisfactory performance evaluations in recent years (Res. Exh. 4, p. 6), Ms. Mesarick contends that management continuously lies about her (Tr. 31); that Tinker AFB tapped her home telephones, stole her keys and broke into her house, and stole her address book and planted it at the Union hall (Tr. 30, 63). Tinker AFB previously proposed to reprimand Ms. Mesarick for making false statements (Tr. 26, 28), but Ms. Mesarick said the supervisor lied about her (Tr. 28). In 1990, Ms. Mesarick told several persons that she had talked to Becky, who had died about a month earlier (Res. Exh. 4, pp. 9-11).

4. In March, 1988, Ms. Mesarick received a suspension of one day; she filed a grievance which she said went to arbitration in about May, 1989; and she said that Ms. Cheryl Prentice, who is in charge of arbitrations for the Union, told her that she had won (Tr. 16).<sup>(2)</sup> Nevertheless, Ms. Mesarick said that she continued to talk to Ms. Prentice every couple of months about the grievance; that, ". . . they were supposed to have hearing over again for 40 different people . . ." (Tr. 17). She stated that, ". . . they finally told me that -- after two years they told me to forget it, that it was -- that case was out in limbo, and I could just forget about it." (Tr. 17).

5. Ms. Mesarick wrote to Mr. Eugene Marshall, President of the Union, on November 19, 1990, in which she stated, in part,

"This is a request for information on the five cases the union has had in arbitration regarding me from 1988 to the present. Ms. Prentice advised me several weeks ago the cases were in limbo indefinitely because Tinker AFB has refused to follow thru. . . ." (G.C. Exh. 1(a), attachment).

6. On November 29, 1990, the Union and Tinker AFB entered into the following memorandum of agreement,

"On Thursday, November 29, 1990, the parties came to agreement on Mesarick Case No. 15771. The Parties formalized an agreement in which the Union would withdraw Mesarick Case No. 15771 from the Expedited Arbitration arena. This will consider the Case No. 15771 closed, and not subject to further arbitration." (Res. Exh. 1; Tr. 66-67).

7. On May 5, 1991, Ms. Mesarick wrote President Marshall again and stated, in part,

"Please advise the latest status on Grievance # 15771. . . . Enclosed is cy of 19

Nov 1990 letter I personally handed to you and you never answered to date." (G.C.

Exh. 1(a), attachment).

Ms. Mesarick stated that Mr. Marshall told her there was no reason for him to write her because he talked to her and didn't have to write (Tr. 18).

8. Ms. Mesarick stated that in May, 1991, President Marshall told her that Tinker AFB was not cooperating and that he was going to file a union grievance against them. (Tr. 19). She then testified,

"A I told him he had till the end of the month."

"A . . . I had told him if he didn't - - if they did a ULP on me, why didn't he file on them? And if he didn't, I was going to."

"A He said, you file anything on anybody, I am going to pull your cases." (Tr. 19-20).

9. President Marshall categorically denied that he made the statement that, "If you file anything on anybody, I will pull your cases." (Tr. 44). He further stated,

"A . . . I categorically deny any statement of threatening her to pull any of her cases." (Tr. 45)

and further,

"A I talked to her, but I never made any statements like she is alleging that I made." (Tr. 52).

CONCLUSIONS

The complaint alleges specifically that:

"11. In May, 1991, the Respondent, by Union President Gene Marshall, told Mesarick words to the effect that if she filed an unfair labor practice charge, her grievance would be dropped."

Ms. Mesarick did testify that President Marshall told her, ". . . you file anything on anybody, I am going to pull your cases." (Tr. 20).<sup>(3)</sup> But President Marshall categorically denied having made any such statement. I found President Marshall a credible witness. On the other hand, while Ms. Mesarick's testimony appears plausible on the surface, upon examination in light of the record her testimony loses credibility. For example, as her grievance, which she identified as Case No. 15771, had been withdrawn by agreement of the Union and Tinker AFB on November 29, 1990 (Res. Exh. 1), what possible reason would the Union have had to tell her in May 1991 that Tinker was not cooperating as to her case? Indeed, although General Counsel darkly suggests that, "Marshall simply didn't want her to learn what the Union had done with her grievance. . . ." (General Counsel's Brief, p. 7), what reason could the Union have had for refusing to disclose the disposition of her grievance? The memorandum of agreement was an accomplished fact and disposition of the grievance could not have been kept secret forever. Eventually, when no relief was forthcoming, Ms. Mesarick must be told, and if eventually, why not then? What possible reason would President Marshall have to threaten withdrawal of a case already disposed of? Ms. Mesarick has a history of difficulty of separating fact from fiction. On balance, as I found President Marshall a credible witness, I credit his denials that he made any statement as Ms. Mesarick alleged. I specifically do not credit Ms. Mesarick's testimony that President Marshall said, in effect, "If you file anything on anybody, I am going to pull your cases."

Having found that Respondent, by its President, did not make the statement as alleged in the Complaint, it is recommended that the Authority adopt the following,

ORDER

The Complaint in Case No. 76-CO-10038 be, and the same is hereby, dismissed.

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WILLIAM B. DEVANEY

Administrative Law Judge

Dated: September 20, 1993

Washington, DC

1. 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)".
2. Contrary to Ms. Mesarick's statement, obviously she had not prevailed in her initial arbitration. The Union was greatly disturbed by the handling of a group of arbitration cases, including Ms. Mesarick's, and sought to have them re-heard. It was this grievance that resulted in an arbitration decision directing the re-hearing of these cases (Tr. 47).
3. Although not an allegation of the Complaint, Ms. Mesarick did testify that after she filed the charge herein [June 12, 1991] President Marshall told her,

". . . Don't file on us and then come over here expecting us to help you." (Tr. 21).

General Counsel asserts that this comment was un rebutted and is ". . . evidence of his [Marshall's] propensity toward coercion and additional support for her charge in this case." (General Counsel's Brief, p. 5). While the language was not specifically referred to, I can not agree that the comment was not denied. President Marshall was asked about conversations with her in May or June and his response was, "I talked to her, but I never made any statements like she is alleging that I made" (Tr. 52) by which he was denying all of Ms. Mesarick's allegations, especially since her filing charges against the Union was mentioned (Tr. 57). In any event, this allegation is not separately addressed.