

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL OCEAN SERVICE, COAST AND GEODETIC
SURVEY, RIVERDALE, MARYLAND

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2640,
AFL-CIO

Case No.
WA-CA-31011

Charging Party

Francis C. Silva

Counsel For the Respondent

Stephen G. De Nigris

Counsel For the General Counsel

Before: GARVIN LEE OLIVER

Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1), on or about August 24, 1993 by circulating a newsletter article entitled "Rip off #4: Unions" throughout Respondent's Riverdale, Maryland facility.

Respondent's answer admitted the commission of an unfair labor practice as alleged in the complaint.

The General Counsel and Respondent filed cross-motions for summary judgment which were referred to this Office by the Acting Regional Director. Considering all the pleadings and exhibits, it appears that there are no genuine issues of material fact and that the General Counsel is entitled to summary judgment as a matter of law. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees, Local 2640, AFL-CIO (AFGE or Union) is a labor organization under 5 U.S.C. § 7103(a)(4).

The Department of Commerce is an agency under 5 U.S.C. § 7103(a)(3). The National Oceanic and Atmospheric Administration (NOAA) is a primary national subdivision under 5 C.F.R. § 2421.5, and the National Ocean Service (NOS) is an activity under 5 C.F.R. § 2421.4. The Coast and Geodetic Survey (CGS) is a line office of NOS.

The charge was filed by the Union with the Washington Regional Director on September 29, 1993. A copy of the charge was served on the Respondent.

During the period covered by the complaint, these persons occupied the position opposite their names:

Kenneth H. Moyer - Chief, Distribution Branch, CGS, NOS, NOAA

Doris Gordon - Supervisory Supply Technician, CGS, NOS, NOAA

Elaine Downs - Supervisory Technical Information Officer, CGS, NOS, NOAA

During the time period covered by this complaint, Moyer, Gordon, and Downs were supervisors under 5 U.S.C. §§ 7103(a)(10) and were acting on behalf of Respondent.

The Union is the exclusive representative of a unit of Respondent's employees appropriate for collective bargaining.

On or about August 24, 1993, Respondent, by Gordon, circulated a newsletter article entitled "Rip off" throughout Respondent's Riverdale, Md., facility. "Rip off #4: Unions" read as follows:

Unions: Unions may have been a good idea a hundred years ago. But today all they're doing is making life more difficult for working people. Today, companies can locate facilities in

Mexico or Malaysia . . . or just about anywhere. Unions drive up costs in the U.S. and actually contribute to the loss of jobs! Trying to prevent change, unions keep their members living in the false security of a bygone era and prevent them from adapting to the new economic realities. What's worse, union bosses cozy up to politicians, bureaucrats and fatcats and end up costing everyone money. You're much better off relying on your own independent, private and personal wealth. You want to control your own money and your own future . . . not leave it to be negotiated away.

Respondent admits that by circulating the newsletter containing this article it committed an unfair labor practice in violation of 5 U.S.C. 7116(a)(1).

On September 1, 1993, in an effort to assure the Union, that this was not an act condoned by the Respondent, Mr. Moyer, wrote a memorandum to Norman Rhodes, President of the Union, expressing regret that the incident occurred. Mr. Moyer advised Mr. Rhodes as follows:

It has come to my attention that an article disparaging Unions was distributed to bargaining unit employees. I assure you I did not direct or approve of this distribution. I regret this occurrence, and in an effort to ensure that no such incidents occur in the future, I will speak to all supervisory officials in the Branch about the importance of allowing the Union and employees to exercise their rights under the Labor-Management Relations Statute.

The Regional Director issued the instant unfair labor practice complaint on December 20, 1993.

Discussion and Conclusions

The parties agree that there is no material issue of fact in dispute and that summary judgment is appropriate. Moreover, Respondent admits, and I find, that it committed an unfair labor practice in violation of section 7116(a)(1) on or about August 24, 1993 by circulating a newsletter article entitled "Rip off #4: Unions" throughout Respondent's Riverdale, Maryland facility.

The only issue that remains is what remedy is appropriate. The General Counsel seeks a cease and desist order and a remedial notice to employees to be signed by the Secretary of Commerce. The General Counsel seeks a notice signed by the Secretary of Commerce because of a number of pending unfair labor practice complaints involving the activity.

I agree with Counsel for the General Counsel that a cease and desist order and a remedial notice to employees are appropriate in this case. With respect to who should be required to sign the notice, the Authority "has long held that the remedial purposes of a notice are best served by requiring the head of the activity responsible for the violation to sign the notice." Department of Health and Human Services, Regional Personnel Office, Seattle, Washington, 48 FLRA 410, 411 (1993). In this case, a supervisory supply technician in the Coast and Geodetic Survey, National Ocean Service was responsible for the admitted violation. The supervisor's branch chief promptly issued an apology to the Union. There is no evidence of involvement in the admitted violation at the activity, primary national subdivision, or department level. Accordingly, the purposes of the Statute would be served by imposing the normal requirement that the head of

the activity, the NOAA Assistant Administrator for the National Ocean Service, sign the remedial notice. U.S. Department of Veterans Affairs, Washington, D.C., 48 FLRA 991, 992 (1993).

Based on the foregoing findings and conclusions, it is recommended that the 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 U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Coast and Geodetic Survey, Riverdale, Maryland shall:

1. Cease and desist from:

(a) Distributing or making statements to employees which interfere with, restrain, or coerce employees in the exercise of their rights to form, join, or assist any labor organization or to refrain from any such activity, freely and without fear of penalty or reprisal.

(b) In any like or related manner interfering with, restraining or coercing its 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) Post at its facilities where bargaining unit employees represented by AFGE, Local 2640 are located 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 NOAA Assistant Administrator for the National Ocean Service 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 insure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, of the Washington Region, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

3. Respondent's Motion for Summary Judgment is denied.

Issued, Washington, DC, February 18, 1994

GARVIN LEE OLIVER

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 distribute or make statements to employees which interfere with, restrain, or coerce employees in the exercise of their rights to form, join, or assist any labor organization or to refrain from any such activity, freely and without fear of penalty or reprisal.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by 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, Washington Region, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, and whose telephone number is: (202) 653-8500.

Dated: February 18, 1994

Washington, DC