

Office of Administrative Law Judges

WASHINGTON, D.C.

AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, LOCAL 2562

Respondent

Case No. DA-CO-90592

and

E.J. HONEYCUTT

Case No. DA-CO-90593

Charging Party

and

HAYDEN WALKER

Charging Party

and

FRANK JAMES

Case No. DA-CO-90622

Charging Party

and

Case No. DA-CO-90635

ALAN ROGERS

Charging Party

Charles M. de Chateauvieux For the General Counsel

N. Marc Greene For the Respondent

Before: Eli Nash, Jr. Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On September 30, 1999, the Regional Director for the Dallas Region

of the Federal Labor Relations Authority (FLRA), issued a Consolidated Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The consolidated complaint alleged that the Respondent violated section 7116(c) of the Federal Service Labor-Management Relations Statute (the Statute), by its refusal to allow the Charging Parties to join the Union without justification.⁽¹⁾

The consolidated complaint afforded Respondent the requisite twenty (20) days, until October 25, 1999, to file an Answer pursuant to section 2423.13(a) of the Authority's Rules and Regulations.⁽²⁾ Respondent did not file an Answer within the required period.

On October 6, 1999, the Chief Administrative Law Judge issued an Order and Notice of Time for Prehearing Conference Call pursuant to section 2423.24 of the Authority's Rules and Regulations. Counsel for the General Counsel submitted its Prehearing Disclosure documents on November 30, 1999.

On December 8, 1999, during the Prehearing Conference call, Respondent through its Acting President N. Marc Greene, acknowledged that Respondent had not filed an Answer to the consolidated complaint. Furthermore, Respondent admitted that it had not filed any Prehearing Disclosures pursuant to section 2423.23 of the Authority's Rules and Regulations.

Counsel for the General Counsel orally moved for summary judgment because of Respondent's failure to file an Answer and to comply with the Authority's revised Rules and Regulations concerning Prehearing Disclosure. The undersigned took the motion under advisement and asked for a written motion for summary judgment from Counsel for the General Counsel which would allow the Respondent an opportunity to respond to the General Counsel's motion. Counsel for the General Counsel filed its written Motion for Summary Judgment dated December 20, 1999. The Respondent filed its response to that motion dated December 25, 1999.

Since the Respondent failed to answer the consolidated complaint and failed to follow the Prehearing Disclosure Rules and Regulations of the Authority, it is recommended that the General Counsel's Motion for Summary Judgment be granted for the following reasons:

Findings of Fact

The uncontested facts establish the following:

On or about May 19, 1999⁽³⁾, unit employees' E.J. Honeycutt and Hayden Walker submitted Requests For Payroll Deductions for Labor Organization Dues (Form SF-1187) requesting to join the Union. Sometime around May 21, unit employee Frank James submitted a Form SF-1187 requesting to join the Union. Thereafter, around May 27, Honeycutt, Walker and James received a letter from Union President Samuel Craig stating that Union membership was a privilege and that the Union was holding their applications in abeyance until it could get a more precise meaning of Article III, Section 2 of the American Federation of Government Employees National Constitution and Article III, Section I of the Local's Bylaws and Public Law No. 95-454. Accompanying these letters, were their Form SF-1187s, with the word "void" written across the forms.

Sometime around June 1, employee Alan Rogers submitted a Form SF-1187 requesting to join the Union. Rogers' application received the identical treatment as the three employees who applied in May. Thus, Craig returned a voided application form to Rogers under the identical cover letter that had been sent to the other applicants. Around the middle of July, after unfair labor practice charges were filed with the FLRA, each employee received a letter from Craig indicating that he had talked to the Union's National Office and General Counsel about the matter and he had decided to let the employees join the Union and vote in the Union Officer election scheduled to be held in the last week of July. It appears however, that because these employees were not allowed to join the Union when they originally applied, they would be prevented from running for Union office in 2000 because they lacked sufficient time as Union members.

Conclusions

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), absent a showing of good cause, provides in pertinent part:

[F]ailure to file an answer or to respond to any allegation
shall constitute an admission.

In this case, Respondent failed to file an Answer by October 25, 1999, as required by section 2423.13(a) of the Authority's Rules and Regulations, even though it was specifically notified of such requirements in the consolidated complaint. Respondent admits that the

consolidated complaint was received in the Union's office on October 8, but avers that this certified mail went unopened in the Union's office for almost two months until December. The reason that the certified mail was unopened, according to Respondent, was because Union President Craig had a heart attack on October 9 or the day after the certified mail was received. Craig has been on sick leave since that time. Since there is no evidence that Craig was the *only* Union official responsible for answering mail or other inquiries at the Union's office, I find this insufficient reason to establish "good cause" for Respondent's failure to file an answer or to excuse the filing of an answer in the instant case. Although Respondent denied "all allegations" in its response to the motion for summary judgment, I find that its failure to file an answer requires a finding that it has already admitted to all the allegations in the consolidated complaint.⁽⁴⁾ Therefore, since no genuine issue of material fact exists, disposition by summary judgment is proper.⁽⁵⁾

Based upon the admitted facts contained in the consolidated complaint, I find that the Respondent, through its President, Samuel Craig refused to allow the Charging Parties to join the Union without justification. Respondent's articulated reasons for denying membership to the Charging Parties was that Union membership is a privilege and that the Union would hold their applications in abeyance until it could get a more precise meaning of Article III, Section 2 of the American Federation of Government Employees National Constitution and Article III, Section I of the Local's Bylaws and Public Law No. 95-454. Section 7116(c) of the Statute provides that it is an unfair labor practice for a union to deny membership to a unit employee "except" for failure to meet occupational standards uniformly required for admission or failure to tender dues. In this case, Respondent's denial of membership clearly was not based on either of the above reasons. Thus, it is found that Respondent's actions in denying membership to the Charging Parties herein constituted a violation of section 7116(c) of the Statute.⁽⁶⁾

Accordingly, it is recommended that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the American Federation of Government Employees, Local 2562, Oklahoma City, Oklahoma, shall:

1. Cease and desist from:

(a) Denying membership to E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers, or any other eligible employee in the collective bargaining unit represented by the American Federation of Government Employees, Local 2562, except for failure: (1) to meet reasonable occupational standards uniformly required for admission, or (2) to tender dues uniformly required as a condition of acquiring and retaining membership.

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

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

(a) Retroactively process the Request For Payroll Deductions for Labor Organization Dues, Form SF-1187 of bargaining unit employees E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers and admit E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers to membership in the American Federation of Government Employees, Local 2562, effective the date they submitted their Form SF-1187s, without any cost to the unit employees.

(b) Post at the business office of the American Federation of Government Employees, Local 2562, and in normal meeting places, including all places where notices to employees and union members 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 2562, 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 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, January 10, 2000.

ELI NASH, JR.

Administrative Law Judge

NOTICE TO ALL EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the American Federation of Government Employees, Local 2562, has violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

We Hereby Notify Our Members and Unit Employees that:

WE WILL NOT deny membership to E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers, or any other eligible employee in the collective bargaining unit represented by the American Federation of Government Employees, Local 2562, except for failure: (1) to meet reasonable occupational standards uniformly required for admission, or (2) to tender dues uniformly required as a condition of acquiring and retaining membership.

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

WE WILL retroactively process the Request for Payroll Deductions for Labor Organization Dues, Form SF-1187 of bargaining unit employees E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers and admit E.J. Honeycutt, Hayden Walker, Frank James and Alan Rogers to membership in

the American Federation of Government Employees, Local 2562 effective the date they submitted their Form SF-1187s, without any cost to these unit employees.

(AFGE, Local 2562)

Dated: _____ By: _____

(Signature)

(Title)

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, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214)767-6266.

1. Counsel for the General Counsel's Motion to Conform Pleading to Proof in this case, is Granted. Accordingly, paragraphs 14 and 15 of the consolidated complaint are amended to show that the charging parties were members of the bargaining unit represented by Respondent.
2. Although the Authority's Rules and Regulations were amended in certain respects effective October 1, 1997, references herein are to the Rules and Regulations which were in effect prior to those amendments and apply to the disposition of this case.
3. Unless otherwise noted, all dates are 1999.
4. Based on the foregoing, I deem it unnecessary to decide whether Respondent's failure to follow prehearing regulations constitutes an admission of the allegations in the consolidated complaint herein.
5. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 41 (1994); *U.S. Department of Treasury, Customs Service, Washington, DC and Customs Service, Region IV, Miami, Florida*, 37 FLRA 603, 610 (1990).
6. *American Federation of Government Employees, Local 2344, AFL-CIO*, 45 FLRA 1004 (1992).