

SA20492

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

DAVIS-MONTHAN AIR FORCE BASE,
TUCSON, ARIZONA

Respondent

and

Case No. SA-CA-20608

AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, LOCAL 2924, AFL-CIO

Charging Party

Stephanie Arthur, Esquire For the General Counsel
Major Phillip G. Tidmore, Esquire Captain Jeffrey A. Rockwell, Esquire For the Respondent
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 July 1, 1992, by American Federation of Government Employees, Local 2924, AFL-CIO, (hereinafter called the Union), against the Davis-Monthan Air Force Base, Tucson, Arizona, (hereinafter called the Respondent), a Complaint and Notice of Hearing was issued on September 29, 1992, by the Regional Director for the San Francisco, California Regional Office, Federal Labor Relations Authority. The Complaint alleges that the Respondent violated Section 7116(a)(1) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of the actions of supervisor John Suhay in surveilling Union sponsored meetings held on June 24, and 25, 1992.

A hearing was held in the captioned matter on December 9, 1992 in Tucson, Arizona. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence

bearing on the issues involved herein. Counsel for the Respondent and Counsel for the General Counsel filed post hearing briefs on January 29, and February 1, 1993, respectively, which have been fully 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

The Union is the exclusive representative of three units of employees at Respondent's Davis-Monthan Air Force Base located in Tucson, Arizona. The employees represented by the Union work, among other places, in the Aerospace Maintenance and Regeneration Center (AMARC) and the Air Combat Command. The area outside of AMARC is commonly referred to as base side.

At the time of the events underlying the instant complaint, Colonel Edward D. Harrow Jr. was the Air Force Base Commander, Mr. Warran Kossman was Respondent's Labor Relations Officer, and Mr. John Suhay was a supervisor in the Supply Section of AMARC.

In June 1992, Mr. Eugene Martin and Mr. Patrick O'Connor, AFGE National Representatives, visited the Air Force Base for purposes of discussing the current impasse negotiations between Respondent and the Union. At such time the National Representatives were informed that a decertification petition was being circulated and that there were also unfounded rumors that the Union was failing to bargain in good faith and refusing to agree to a compressed work schedule proposed by management.

The National Representatives decided to hold a number of "lunch and learn" sessions for purposes of informing the employees about the status of the contract negotiations and to also provide the employees with information concerning the Union's benefit programs. Inasmuch as the majority of the employees worked in two locations, i.e. AMARC and base side, it was further decided to hold a separate "lunch and learn" meeting in each location.

Thereafter, Union President Edward Margosian made arrangements with a Colonel Reanda to hold a "lunch and learn" meeting in the reclamation area at AMARC on June 24, 1992, during the employees scheduled lunch break. Similarly, Union Vice President Tony Levy made arrangements with Recreation Center Director Wally Krueger for the use of the Recreation Center's ballroom during the lunch break on June 25, 1992.

The Union then proceeded to hand out leaflets announcing the two scheduled "lunch and learn" meetings. The distribution of leaflets was not confined solely to bargaining unit employees. Thus, the record evidence discloses that leaflets were given to a number of supervisors for allegedly "informational purposes". In this latter connection, National Representative O'Connor acknowledges that Mr. Levy told two supervisors that "if you want to stop by we'll give you a sandwich" and that he, Mr. O'Connor, instructed Mr. Levy not to do it anymore.

Separate leaflets for each of the above described meetings scheduled for June 24 and 25 announced that the "lunch and learn" meetings were sponsored by the AFGE and that the speakers would be National

Representatives O'Connor and Martin. The leaflet concerning the AMARC meeting stated that it is for "All AMARC Employees" and the leaflet concerning the base side meeting stated that it was for "All DMAFB Employees". The scheduled time for the meetings was each lunch break beginning at 11 a.m. at AMARC and 10:30 a.m. at the Recreation Center.

On June 23, 1982, Mr. Margosian was informed by Colonel Reanda that Colonel Harrow had cancelled the scheduled "lunch and learn" meetings. At 5 p.m. that afternoon Mr. O'Connor, Mr. Martin, Mr. Margosian and Mr. Levy from the Union met with Colonel Harrow, Mr. Kossman and Ms. Stephanie Willis, the Base Legal Officer, for purposes of discussing the cancelled "lunch and learn" meetings. Colonel Harrow expressed concern that the meetings were being held outside the employees' scheduled lunch hours. Upon being informed that the meetings were only going to be held during the employees' scheduled lunch hours and the topics that the Union intended discuss at the "lunch and learn" meetings, Colonel Harrow reconsidered his decision and approved the scheduled meetings that were announced in the leaflets distributed by the Union. At the end of the meeting, according to Mr. Levy, Mr. Martin asked Colonel Harrow if he would like to attend the meetings and Colonel Harrow replied "No, that's not necessary". Further, according to Mr. Levy, it was clear to him that this was not a serious invitation, but rather an attempt by Mr. Martin to show that everything the Union was doing was proper. On June 24, 1992, the Union held its first "lunch and learn" meeting commencing at 11 a.m. in the reclamation area of AMARC.⁽¹⁾ Following an introduction by Union President Margosian, Mr. O'Connor proceeded to speak about the status of the contract negotiations and the fact that the matter was before the Impasses' Panel. He also spoke about the decertification petition that was being circulated. Following the conclusion of the speeches, questions were entertained and employees were approached about joining the Union.

Mr. John Suhay, an AMARC supervisor and one of the Agency's negotiators, was present during the entire meeting held in the reclamation area of AMARC. Mr. Suhay sat on a table in plain view of the employees during the meeting taking notes. While the Local Union Officers knew that Mr. Suhay was a supervisor, Mr. O'Connor did not know of his status until after the meeting. The Union officials did not ask Mr. Suhay to leave the meeting because they were of the opinion that since the meeting was being held in an open public area they could not prevent him from attending the meeting.

The next day the Union held, as advertised, it's second "lunch and learn" at the Recreation Center. Shortly before 11 a.m., when the meeting was scheduled to start so as coincide with the employees' scheduled lunch period, Mr. John Suhay entered the Recreation Center. Mr. O'Connor and Mr. Margosian upon noticing Mr. Suhay approached him and asked him to leave the premises. Mr. Suhay protested, claiming that the leaflet announcing the meeting invited all employees to attend. However, he did honor their request and left the room. Mr. O'Connor then proceeded to address the employees in the same manner as he had done on the previous day at the AMARC meeting. Shortly thereafter, Mr. Suhay returned to the room. Upon noticing Mr. Suhay's return, Mr. O'Connor stopped his presentation, pointed to Mr. Suhay and informed the employees that Mr. Suhay was a supervisor who he, Mr. O'Connor, had earlier asked to leave the meeting. Base Security was then called and they subsequently escorted Mr. Suhay from the room.

A few minutes later Mr. O'Connor was called out of the room by Security and informed that Mr. Suhay had been sent to the meeting by upper management. When, O'Connor continued to protest Mr. Suhay's presence at the meeting, Security put him on the telephone with Mr. Kossman, Respondent's Labor Relations Officer, who told him that Mr. Suhay had a right to attend the meeting since the flyer announcing the meeting indicated that it was open to all employees. Further, according to the credited testimony of Mr. O'Connor, Mr. Kossman also told him that the Respondent had sent Mr. Suhay to monitor the meeting. While Mr. O'Connor was talking to Mr. Kossman and other management officials, the meeting ended and employees began to leave.

According to Mr. Tony Levy, the Vice President of the Local Union, at the end of the meeting, three or four employees expressed their concerns about the presence of a supervisor and asked if their names might possibly "appear on any kind of list on base".

According to Mr. Suhay, he attended the meetings solely for the purpose of learning about certain union benefits.

Discussion and Conclusions

It is well settled that surveillance by supervisors of employees' union activities interferes with, restrains or coerces the employees in the exercise of their section 7102 right to form, join or assist a union and consequently violates Section 7116(a)(1) of the Statute. Department of the Army, Fort Bragg Schools, 3 FLRA 364. Both of the Parties to this proceeding acknowledge that the aforementioned statement is a correct interpretation of the law. However, Respondent would find that in the instant case there was no unlawful surveillance since the leaflets announcing the two "lunch and learn" meetings invited all employees to attend and Mr. Suhay was there solely to acquire information about the Union's benefit package.

Having credited the testimony of Mr. O'Connor that Mr. Kossman had informed him that Mr. Suhay had been instructed to monitor the meetings, I find, contrary to the contention of Respondent, that Mr. Suhay was not at the meetings because he believed that they were open to all employees, i.e., supervisors and non-supervisors alike, and because he wanted to acquire information on the Union's benefits package. I further find that Mr. Suhay's attendance at the meetings was for the sole purpose of surveilling the employees' union activity. In such circumstances, I find that by virtue of Mr. Suhay's activities, Respondent violated Section 7116(a)(1) of the Statute.

Accordingly, I hereby recommend 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 Davis-Monthan Air Force Base, Tucson, Arizona, shall:

1. Cease and desist from:

(a) Directing or permitting supervisors or other management officials to attend duly authorized informational meetings designed to solicit membership of bargaining unit employees in the American Federation of Government Employees, Local 2924, AFL-CIO, the exclusive representative of its employees, or any other labor organization.

(b) Monitoring or surveilling communications between the American Federation of Government Employees, Local 2924, AFL-CIO, and bargaining unit employees at duly authorized meetings such as the "lunch and learn" meetings conducted on June 24, 1992 at AMARC and June 25, 1992 at the Recreation Center.

(c) 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 designed to effectuate the purposes and policies of the Statute:

(a) Post at its facilities in the Davis-Monthan Air Force Base, Tucson, Arizona where members of the bargaining unit represented by American Federation of Government Employees, Local 2924, AFL-CIO, are employed, copies of the attached notice marked "Appendix" on forms to be furnished by the Authority. Upon receipt of such forms, they shall be signed by the Commander of the Davis-Monthan Air Force Base, Tucson, Arizona, and shall be posted and maintained by him for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. The Commander shall take reasonable steps to insure that said 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 San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this ORDER, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 28, 1993

BURTON S. STERNBURG

Administrative Law Judge

APPENDIX

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 direct or permit supervisors or other management officials to attend duly authorized informational meetings designed to solicit membership of bargaining unit employees in the American Federation of Government Employees, Local 2924, AFL-CIO (Union), the exclusive representative of our employees, or any other labor organization.

WE WILL NOT monitor or surveil communications between the Union and bargaining unit employees at duly authorized meetings such as the "lunch and learn" meetings conducted by the Union on June 24, 1992 at AMARC and June 25, 1992 at the Recreation Center.

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

(Activity)

Date: _____ By: _____

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of the 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, San Francisco Region, Federal Labor Relations Authority, and whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103 and whose telephone number is: (415) 744-4000.

Dated: September 27, 1993

Washington, DC

1. The AMARC reclamation area, according to the uncontradicted testimony of Mr. Margosian, is a building the size of two or three football fields which is open on all four sides. Although a number of tables had been set up for the meeting, due to its location and size, people were coming and going. It was impossible, according to Mr. Margosian, to close it off and prevent people from entering the meeting area.