

AT-70600

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

AIR FORCE MATERIEL COMMAND,
WARNER ROBINS AIR LOGISTIC CENTER, ROBINS AIR FORCE
BASE,

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL
987

Case No.

AT-CA-70600

Charging Party

Major Dixie A. Morrow C. R. Swint, Jr. Counsel for the Respondent
Paige A. Sanderson Richard Jones Counsel for the General Counsel,
FLRA

Before: GARVIN LEE OLIVER Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that the 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 May 14, 1997, when Supervisor Louis Ragan informed Union vice president Ronnie Martin that he, Martin, should not file grievances against his supervisors because, essentially, it would cause problems for Martin and the grievant.

The Respondent's answer admitted the jurisdictional allegations as to the Respondent, the Union, and the charge, but denied that the alleged statement was made and any such violation of the Statute.

A hearing was held in Macon, Georgia. The Respondent and the General Counsel were represented by counsel and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs.

The General Counsel presented the testimony of Ronnie Martin. Martin testified concerning two alleged meetings with Supervisor Louis Ragan during the pertinent period and that the alleged statement was made at the first meeting. The Respondent presented the testimony of Supervisor Louis Ragan who denied that the first meeting was held or that the alleged statement was made.

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The determination of whether the employee-Union representative (Martin) or his second level supervisor (Ragan) was telling the truth was difficult in this case. I was aided by the fact that the examination and cross-examination of the witnesses were conducted by very able counsel for both sides who thoroughly developed all the relevant facts, and counsel also capably evaluated the testimony in their oral argument or brief.

I have credited the testimony of Union representative Martin. Among other things, I found that Martin had less of a personal interest in the outcome of the case than Ragan. Further, although Martin and Ragan have been professionally related for over six years, and have worked with each other on countless grievances, and had a good relationship, Martin has been under Ragan as a second-level supervisor for about a year and the grievance in issue was the first one which involved employees in Martin's immediate work area. I was also impressed with Martin's detailed account of the second meeting which was forthright and convincing and lent credence to his version of the first meeting.

Based on the entire record, including my observation of the witnesses and their demeanor, and consideration of all the circumstances, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees (AFGE), Council 214 is the exclusive representative of an Air Force Logistics Command-wide unit of employees. The Charging Party (AFGE, Local 987 or the Union) is the agent of the exclusive representative for representing unit employees at the Command's Warner Robins Air Logistics Center (Warner Robins).

Ronnie Martin is presently employed in the TIN Section at Warner Robins. Martin also serves as the Union vice president of maintenance for this unit. Martin is responsible for seven directorates, and he manages approximately 60 stewards.

Louis Ragan, as Chief of the TINMP Section, is Martin's second-level supervisor. He has three supervisors under him, including Martin's, and has been employed by Warner Robins for over 20 years. He has handled numerous grievances and has received labor relations training concerning their processing, including the admonition not to interfere with the Union's right to represent grievants.⁽¹⁾

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It is undisputed that Martin and Ragan had an amiable professional relationship for about six years and had conferred on numerous occasions concerning the resolution of grievances when Ragan was chief in another area. They had also engaged in casual conversations in Ragan's office. However, Martin had worked in Ragan's supervisory chain for only about six months prior to the events in issue.

On May 14, 1997, Martin went to Ragan's office for an unscheduled courtesy call and to update Ragan on the status of Andy Ford's mother. Andy Ford, a unit employee, is the executive vice president for Local 987. Ragan had previously asked Martin to keep him informed about Ms. Ford's health.⁽²⁾ The conversation then shifted to a discussion about the shop, including that a supervisor was needed on the "owl," or night, shift.

Ragan also stated to Martin that he was aware that Robert Freeman had filed a grievance over his performance appraisal, and he asked Martin what that was all about.⁽³⁾ Martin responded that he presumed Freeman felt like he deserved a better appraisal. Ragan stated that Freeman received an excellent appraisal. Martin agreed, but again remarked that Freeman "felt he should have gotten better." At that time, Ragan revealed to Martin that in the past he had seen Freeman sitting down on the job with his feet propped up. Martin asked Ragan whether he had counseled Freeman during the year about this, and Ragan responded that he had not. Martin replied to the effect that Ragan should have commented on it at the time instead of waiting until the last minute.

Ragan then told Martin, "I don't know why you want to represent a lot of these people. A lot of it's nothing but gripes anyway." Martin replied that sometimes a grievance form sounds like a gripe, but "you do some research and it's got some validity to it." Martin also stated that "if it is a

legitimate grievance, then by our contract and by federal laws, we have to represent them." It is at this time that Ragan told Martin that he "really shouldn't represent people within our shop because it would cause hard feelings and all."

A meeting had previously been scheduled for the next day, May 15, 1997, at 7:50 a.m. with Ragan to discuss Freeman's performance appraisal grievance. Martin, Freeman, and Freeman's supervisor, Jerry Wahl, arrived at 7:55 a.m.

Ragan, in what he described as a joking manner, asked the participants why they couldn't attend the meeting on time. Martin explained that he had to get some copies of the appraisal. Ragan replied that he should

have already done that. Martin said he knew that, but was running behind.

Ragan's comment apparently irritated the grievant, Freeman, who said he really didn't think they were going to get anything done, and they ought to forget it and elevate the grievance to step two.

Ragan then told Freeman to "Get out of my damn office. I'll talk with Ronnie [Martin] and Jerry [Wahl]." Martin replied that if Freeman was going to leave then Wahl had to leave also.

Freeman and Wahl departed at that time, and Ragan and Martin proceeded to discuss the grievance for about 20 to 25 minutes. Ragan said nothing to discourage Martin from pursuing the grievance during this discussion, and Martin did not bring up Ragan's previous statement on May 14. Toward the end of the meeting, Ragan asked Martin what it would take to resolve the grievance. Martin conferred with Freeman and advised Ragan of the results. Ragan said he would consider it and render his decision at a later date. The Freeman grievance is now in arbitration.

Discussion and Conclusions

Section 7102 of the Statute protects each employee in the exercise of the right to form, join, or assist a labor organization, including the right to act as a labor organization representative, or to refrain from any such activity, without fear of penalty or reprisal. Section 7116(a)(1) provides that it is an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise by the employee of such right.

It is well established that section 7102 of the Statute encompasses an employee's right to file and process a grievance under a negotiated grievance procedure as well as the right to gather evidence in support of that grievance or investigate whether to file a grievance. Department of Justice, Bureau of Prisons, Federal Correctional Institution, Butner, North Carolina, 18 FLRA 831, 832-33 (1985).

The Authority has held that the standard for determining whether management's statement or conduct violates section 7116(a)(1) of the Statute is an objective one. The question is whether, under the circumstances, the statement or conduct would tend to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement. Although the circumstances surrounding the making of the statement are taken into consideration, the

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standard is not based on the subjective perceptions of the employee or the intent of the employer. U.S. Department of Agriculture, U.S. Forest Service, Frenchburg Job Corps, Mariba, Kentucky, 49 FLRA 1020, 1034 (1994).

As found above, the record reflects that Supervisor Ragan stated to Union representative Martin that he "really shouldn't represent people within our shop because it would cause hard feelings and all." This statement indicated that Ragan did not approve of Martin pursuing the grievances of fellow employees against a supervisor in his own shop. Such a statement, coming from a second-level supervisor of the Union representative, with power to affect his conditions of employment, would tend to coerce or intimidate the employee from exercising the statutory right to assist a labor organization, including acting as a labor organization representative, and from also exercising the statutory right to present and process grievances. See 5 U.S.C. §§ 7102, 7114(a)(1), 7121(b)(3)(A). Accordingly, such conduct violated section 7116(a)(1) as alleged.

Based on the above 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 Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, shall:

1. Cease and desist from:

(a) Making statements, comments, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute to form, join, or assist the Union, including their right to act as a Union representative, and the right, in that capacity, to present and process grievances and present the views of the Union to appropriate authorities.

(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 all locations at its Warner Robins, Georgia facility, where bargaining unit employees represented by the American Federation of Government Employees, Local 987, AFL-CIO, 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 Commanding General, 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.

(b) Pursuant to §2420.30 of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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 14, 1998

GARVIN LEE OLIVER

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

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We hereby notify our employees that:

WE WILL NOT make statements, comments, or 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 to form, join, or assist the American Federation of Government Employees, Local 987 (Union), the agent of the exclusive representative of our employees, including their right to act as a Union representative, and the right, in that capacity, to present and process grievances and present the views of the Union to appropriate authorities.

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)

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, Atlanta Regional Office, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, N.E., Atlanta, Georgia, 30303-1270, and whose telephone number is:

(404) 331-5300.

1. Ragan testified that, as a result of this training, he was aware of the possible repercussions for statements interfering with union representation, and he would not put himself in that position by making the alleged statements.
2. Ragan testified that he did not recall asking Martin to keep him apprised of Andy Ford's mother's condition as he knew Andy well enough to call and ask Andy himself.

3. In May of 1997, Robert Freeman, a bargaining unit employee, filed a grievance over his performance appraisal. Martin was designated as Freeman's Union representative.