

UNITED STATES OF AMERICA  
BEFORE THE  
FOREIGN SERVICE LABOR RELATIONS BOARD  
WASHINGTON, D.C.

INTERNATIONAL COMMUNICATION AGENCY

Respondent

and

Case No. 3-CA-2861(F)

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1812, AFL-CIO

Charging Party

DECISION AND ORDER

This matter is before the Board pursuant to the Regional Director's Order transferring the case to the Foreign Service Labor Relations Board in accordance with sections 1423.9(a)(5) and 1429.1(a) of the Board's Rules and Regulations.<sup>1/</sup>

Upon consideration of the entire record, including the parties' stipulation of fact, accompanying exhibits, and Memorandum submitted on behalf of Counsel for the General Counsel, the Authority finds:

The Charging Party is the exclusive representative of Foreign Service employees of the Respondent, excluding management officials and confidential employees as defined in section 1002(9) of the Foreign Service Act of 1980. It is alleged that the Respondent, in sending a cable to unit employees, thereby solicited employees' views on working conditions without prior notice to the Charging Party and bypassed the exclusive representative in violation of section 1015(a)(1) and (5) of the Foreign Service Act of 1980.<sup>2/</sup>

1/ In the Order the Regional Director inadvertently referred to the Federal Labor Relations Authority and identified the Authority's regulations. The transfer is, however, consistent with the Board's Rules and Regulations.

2/ Section 1015(a)(1) and (5) provides:

It shall be an unfair labor practice for the Department--

(1) to interfere with, restrain, or coerce any employee in the exercise of any right under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter[.]

The cable, which indicates that it was drafted by James T. Hackett, Associate Director of the Respondent, and approved by Charles Z. Wick, Director of the Respondent, was sent on or about August 20, 1981, to employees represented by the Charging Party, without prior notification to the Charging Party. It provided:

1. During my recent trip to Europe, I received a number of suggestions from Paos [Public Affairs Officers] concerning the agency's personnel management system, and promised to look into and follow up on the matters they raised.
2. After discussing these issues, my senior staff and I have made a commitment to improve the personnel system of USICA. We intend to assure that the system operates with greater flexibility and common sense, and that the interests of both the individual officer and the post are given full and careful consideration. In particular, we will make every effort to determine assignments in a timely fashion so that personnel in the field will know as early as practicable when and where their next assignment will be. We will also be looking at our recruitment, training and assignment policies and procedures to make the best possible use of the talents and qualifications of all our personnel.
3. As we review these and other management matters, I invite you to convey any views you may have as individuals to me directly. I assure you that your views will be considered and will be most helpful.
4. I want to express my great satisfaction with the high quality of the professional staff in the field that I have had the opportunity to meet. I am proud that we have a first rate team and look forward to working with all of you as part of our official family to achieve the goals and advance the interests of our country. Your wholehearted support is essential to the success of our mission.

Section 1013(a) of the Foreign Service Act of 1980 provides, in pertinent part, that, "A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit . . ." Such entitlement inherently requires that as to "conditions of employment," as defined in Section 1002(5),

management's "collective bargaining"<sup>3/</sup> be with the exclusive representative.<sup>4/</sup> To engage in collective bargaining directly with unit employees contradicts the obligation to negotiate in good faith with the labor organization that is the exclusive representative.

This is not to say that every communication by agency management directly with employees in units of exclusive recognition constitutes a violation of the chapter. Each communication must be judged independently for a determination as to whether it constitutes an attempt by management to bypass the exclusive representative and deal directly with unit employees as to conditions of employment.<sup>5/</sup>

In our view the cable at issue in this case does constitute an attempt by management to engage in collective bargaining directly with unit employees in contradiction of its collective bargaining obligation. The content of the cable informs unit employees that their condition of employment concerns have been heard and that positive action to respond will be taken, e.g., "we will make every effort to determine. . . ." "we will also be looking. . . ." Moreover, the cable seeks out such direct dealings:

I invite you to convey any views you may have as individuals to me directly. I assure you that your views will be considered and will be most helpful.

The agency may have been motivated by the best intentions, but the bilateral nature of the collective bargaining relationship mandates that such dealings be with the exclusive representative rather than directly

3/ Section 1002(3) provides in pertinent part that "collective bargaining" means "the performance of the mutual obligation" of the management representative and of the exclusive representative of employees. The House Report describing Section 1002(3) states,

The definition confirms the mutual obligation of the Department and exclusive employee representative bilaterally and in good faith to negotiate the conditions of employment affecting employees. . . ." (H.R. Rep. No. 96-992, Part 1, 96th Cong., 2d Sess. 84 (1980)).

4/ In this regard, the Section 1004(b)(2) statement of employee rights includes the right--"to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees . . ." (Emphasis added.)

5/ Division of Military and Naval Affairs, State of New York, Albany, New York, 8 FLRA No. 71 (March 26, 1982). The House Report on Chapter 10 states, "Decisions of the FSLRB are to be consistent with FLRA decisions, except where special circumstances require otherwise." (H.R. Rep. No. 96-992, Part 1, 96th Cong., 2d Sess. 87 (1980)).

with unit employees. Accordingly, the communication at issue herein constitutes a section 1015(a)(5) refusal to negotiate in good faith with the exclusive representative and section 1015(a)(1) interference with, restraint and coercion of employees in the exercise of their right to be represented by their exclusive representative.

ORDER

Pursuant to section 1423.29 of the Foreign Service Labor Relations Board's Rules and Regulations and section 1016 of Chapter 10 of the Foreign Service Act of 1980, the Board hereby orders that the International Communication Agency shall:

1. Cease and desist from:

(a) Refusing to negotiate in good faith with American Federation of Government Employees, Local 1812, AFL-CIO by dealing directly with unit employees with respect to conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing any employee in the exercise by the employee of any right under Chapter 10, Labor-Management Relations of the Foreign Service Act of 1980.

2. Take the following affirmative action in order to carry out the purposes and policies of the Chapter:

(a) Negotiate in good faith with American Federation of Government Employees, Local 1812, AFL-CIO with respect to conditions of employment for unit employees.

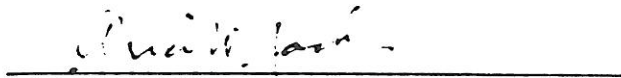
(b) Post at locations where notices to unit employees are customarily posted appropriately signed copies of the attached Notice, such notices to be posted for 60 consecutive days.

(c) Notify the Regional Director of Region 3, 1111 18th Street, NW., Suite 700, Washington, D.C., 20036, in writing, within 30 days from the date of this Order as to what steps have been taken to comply herewith.

Issued, Washington, D.C., June 1, 1982

  
\_\_\_\_\_  
Ronald W. Haughton, Chairman

  
\_\_\_\_\_  
Arnold Ordman, Member

  
\_\_\_\_\_  
Arnold M. Zack, Member

FOREIGN SERVICE LABOR RELATIONS BOARD

PURSUANT TO  
A DECISION AND ORDER OF THE  
FOREIGN SERVICE LABOR RELATIONS BOARD  
and in order to effectuate the policies of  
CHAPTER 41 OF TITLE 22 OF THE  
UNITED STATES CODE  
FOREIGN SERVICE LABOR-MANAGEMENT RELATIONS

We Hereby Notify Our Employees That:

WE WILL NOT refuse to negotiate in good faith with American Federation of Government Employees, Local 1812, AFL-CIO by dealing directly with unit employees with respect to conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any employee in the exercise by the employee of any right under Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980.

WE WILL negotiate in good faith with American Federation of Government Employees, Local 1812, AFL-CIO with respect to conditions of employment for unit employees.

\_\_\_\_\_  
(Agency or Activity)

Dated: \_\_\_\_\_

By:

\_\_\_\_\_  
(Signature)

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, Federal Labor Relations Authority, Region 3, 1111 18th Street, NW., Suite 700, Washington, D.C. 20036.

UNITED STATES OF AMERICA  
BEFORE THE  
FOREIGN SERVICE LABOR RELATIONS BOARD  
WASHINGTON, D.C.

INTERNATIONAL COMMUNICATION AGENCY\*/

Respondent

and

Case No. 3-CA-2861(F)

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1812, AFL-CIO

Charging Party

ORDER

On June 1, 1982, the Foreign Service Labor Relations Board issued a Decision and Order in this case finding that respondent had engaged in certain conduct violative of section 1015(a)(5) and (1) of the Foreign Service Act of 1980, 22 U.S.C. § 4101 et seq. (Supp. V 1981) (the "Chapter"), and ordered that respondent cease and desist from such conduct and take specified affirmative action in order to carry out the purposes and policies of the Chapter.

Subsequently, the charging party and respondent filed with the Regional Director a Stipulation and Joint Motion ("motion") moving that the "case be ordered withdrawn and that no further action be taken . . . ." On December 14, 1982, the Regional Director referred the motion to withdraw to the Board. Also on December 14, 1982, counsel for the General Counsel filed with the Board an opposition to the motion.

Upon consideration of the motion, the opposition, and the entire record in this case, the Board makes the following determinations. It appears that respondent has ceased engaging in the proscribed conduct. Furthermore, the charging party and respondent have engaged in extensive discussions with respect to matters at issue between them and have reached a mutually satisfactory settlement.

Accordingly, in the particular circumstances of this case, the Board concludes that the purposes and policies of the Chapter have been effectuated and that no further action is required

---

\*/ The name of respondent has been changed to the United States Information Agency, by § 303(a) of Pub. L. No. 97-241, 96 Stat. 273, 291.

with respect to the Board's Order. The case is hereby remanded to the Regional Director with directions to close the proceeding.

Issued, Washington, D.C., January 19, 1983

  
Ronald W. Haughton, Chairman

  
Arnold Ordman, Member

  
Arnold M. Zack, Member

FOREIGN SERVICE LABOR RELATIONS BOARD



UNITED STATES OF AMERICA  
BEFORE THE  
FOREIGN SERVICE LABOR RELATIONS BOARD  
WASHINGTON, D.C.

INTERNATIONAL COMMUNICATION AGENCY

Respondent

and

Case No. 3-CA-2861(F)

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1812, AFL-CIO

Charging Party

CERTIFICATE OF SERVICE

Copies of the Order of the Foreign Service Labor Relations Board in the subject proceeding have this day been mailed to the parties listed below:

Ms. Beth S. Slavet  
American Federation of Government  
Employees, Local 1812, AFL-CIO  
c/o United States Information Agency  
1776 Pennsylvania Avenue, NW.  
Room 164  
Washington, D.C. 20547

Mr. Allan Myers  
Chief, Labor Relations Staff  
United States Information Agency  
400 C Street SW.  
M/TTL Room 536  
Washington, D.C. 20547

Mr. Kenneth T. Blaylock  
National President  
American Federation of Government  
Employees, AFL-CIO  
1325 Massachusetts Avenue, NW.  
Washington, D.C. 20005

Mr. Alexander Graham  
Regional Director, Region III  
Federal Labor Relations Authority  
P. O. Box 33758  
Washington, D.C. 20033-0758

Mr. Joseph A. Blundon  
Assistant General Counsel  
United States Information Agency  
1750 Pennsylvania Avenue, NW.  
Washington, D.C. 20547

Mr. Dave Fedder  
Counsel for the General Counsel  
Federal Labor Relations Authority  
500 C Street, SW.  
Washington, D.C. 20424