

**UNITED STATES OF AMERICA**  
**FEDERAL LABOR RELATIONS AUTHORITY**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**WASHINGTON, D.C. 20424-0001**

INTERNAL REVENUE SERVICE,  
OGDEN SERVICE CENTER,  
OGDEN, UTAH

Respondent  
and

Case No. DE-CA-30893

ELIZABETH ANN PAINTER,

Individual

Charging Party

Janis E. Baldwin      Counsel for the Respondent      Matthew Jarvinen      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 Respondent violated section 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1), when the Respondent's agent, Chris Gough, in denying bargaining unit employee Painter's request for advanced sick leave, told Painter that upon her return to work, it would not take long for her to go complain to the Union.

Respondent's answer denied that the alleged statement was made and any violation of the Statute.

A hearing was held in Salt Lake City, Utah. The Respondent and the General Counsel were represented by

counsel and afforded full opportunity to be heard, adduce relevant evidence, and examine and cross-examine witnesses. Counsel for the General Counsel introduced certain documentary evidence and presented the testimony of the Charging Party, Elizabeth Ann Painter, who testified as to the surrounding circumstances and the alleged statement. Counsel for Respondent presented the testimony of Supervisor Chris Gough who testified as to the surrounding circumstances and denied that any such statement was made. Based on the entire record, including my observation of the witnesses and their demeanor, and the extensive arguments in the briefs as to the credibility of the respective witnesses, I have credited major portions of the testimony of the Charging Party. I found her detailed testimony to be forthright and persuasive. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

### Findings of Fact

On February 9, 1993, Elizabeth Ann Painter, a seasonal career-conditional term employee of Respondent, requested her supervisor, Chris Gough, to approve advanced sick leave in connection with surgery on her left wrist scheduled for the next day. She presented a certificate from the medical center indicating that she would be unable to work for six to eight weeks. Gough initially denied Painter's request, stating that seasonal employees were not eligible for advanced sick leave.

Painter then went to the office of Nancy Fisher, the president of Chapter 67, National Treasury Employees Union (NTEU), which represents unit employees for NTEU at the Respondent's Ogden facility. Painter was advised that she was eligible for advanced sick leave under the negotiated agreement. She was given a copy of the pertinent contract provision. Painter then proceeded to talk to Linda Fielding, an EEO counselor in Employee Services. Fielding confirmed that Painter was entitled to advanced sick leave and furnished Painter the forms to fill out. Fielding also telephoned Supervisor Gough to inform her of Painter's eligibility for advanced sick leave.

When Painter returned to Gough with the contract provision and the completed papers, Gough appeared to be upset. Her face was red and she raised her voice. Painter and Gough discussed the possibility of light work for Painter and the length of time Painter would be off. At that time, Gough went on to ask Painter how long it would be after Painter returned, after her six to eight week absence, before she "started to complain again and run to the Union?"

Following the conversation, Gough promptly submitted Painter's application for advanced sick leave and it was approved the same day. Gough called Painter at home later in the day to inform her of that fact.

The record reflects that Painter had previously asked the Union to intervene with Gough concerning an incident that occurred near the end of the 1992 tax season. The Union president informed Painter at that time that she had spoken to Gough and resolved the matter.

### 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, 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.

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 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).

Gough's comment, in the context of processing Painter's request for advanced sick leave, questioning how long it would be until Painter started to complain again and run to the Union, would make a reasonable employee in Painter's position "think twice" about exercising the statutory right to seek the Union's assistance in the resolution of an employment problem. Under such circumstances, a reasonable employee would conclude that further attempts to seek Union assistance may lead to adverse job consequences. Thus, the statement was coercive and constituted interference with the protected right of a bargaining unit employee in violation of section 7116(a)(1), as alleged. See Navy Resale System Field Support Office Commissary Store Group, 5 FLRA 311 (1981); Department of the Treasury, Internal Revenue Service, Louisville District, 11 FLRA 298 (1983).

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 Internal Revenue Service, Ogden Service Center, Ogden, Utah, shall:

1. Cease and desist from:

(a) 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, including the right to seek the labor organization's assistance in the resolution of an employment problem, 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, 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 Director, 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 Denver Region, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, June 22, 1995

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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 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, including the right to seek the labor

organization's assistance in the resolution of an employment problem, 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)

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, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, and whose telephone number is: (303) 844-5224.