



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: MARCH 25, 2011

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE ARMY
JOINT MANUFACTURING AND TECHNOLOGY CENTER
ROCK ISLAND ARSENAL, ROCK ISLAND, ILLINOIS

RESPONDENT

AND

Case No. CH-CA-09-0533

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 2119, AFL-CIO

CHARGING PARTY

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs and motions filed by the parties.

Enclosures



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CHARGING PARTY

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NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 25, 2011**, and addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW., 2nd Floor
Washington, DC 20424-0001

RICHARD A. PEARSON
Administrative Law Judge

Dated: March 25, 2011
Washington, D.C.

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
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U.S. DEPARTMENT OF THE ARMY
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RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2119, AFL-CIO

CHARGING PARTY

Case No. CH-CA-09-0533

Gary W. Stokes
For the General Counsel

Brian A. Tuftee
David Lee
For the Respondent

Craig Flenker
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101 *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. part 2423.

The case was initiated on June 15, 2009, when the American Federation of Government Employees, Local 2119, AFL-CIO (the Union or Charging Party) filed an unfair labor practice charge against the Department of the Army, Joint Manufacturing and Technology Center, Rock Island Arsenal, Rock Island, Illinois (the Agency or Respondent).

After investigating the charge, the Regional Director of the Chicago Region of the Authority issued a Complaint and Notice of Hearing on March 26, 2010, alleging that the Respondent had interfered with, restrained and coerced employees in the exercise of their section 7102 rights by telling an employee that it would have to take corrective action against her if she kept asking for her Union steward. The Respondent filed its Answer to the Complaint on April 19, 2010, denying that it had made a coercive statement to the employee or otherwise committed an unfair labor practice.

A hearing was held in this matter on May 26, 2010, in Rock Island, Illinois. All parties were represented and afforded the opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel (GC) and the Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record,¹ including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute. G.C. Ex. 1(b), 1(c). Its Joint Manufacturing and Technology Center, or JMTC, operates three shifts around the clock, with approximately 225 employees working in seven buildings on the third shift, from 10:15 p.m. to 6:15 a.m. Tr. 72, 127-28. Keith Keiser is the third shift factory manager. The Union is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the exclusive representative of a unit of the Respondent's employees at the JMTC. G.C. Ex. 1(b), 1(c). The Respondent and the Union are parties to a collective bargaining agreement (CBA). G.C. Ex. 10; Resp. Ex. 1.

Jodi Christy is a Wage Grade 8 welder who has worked for the Respondent since April of 2008. In February of 2009,² she moved from the day shift to the third shift, where she was supervised by Raymond Zepeda, another welder who served as acting supervisor or

¹ Upon review of the Transcript (Tr.), I note the following error and correct the transcript as follows:

Page 76, line 1 is changed from "12:15" to "10:15".

² Unless otherwise noted, all dates refer to 2009.

work leader³ from about October 2008 to July 2009. Tr. 20-21, 72. While working on the day shift, Ms. Christy had filed an EEO complaint against another employee; the settlement of that EEO case required her to meet with an Employee Assistance Program (EAP) counselor. Tr. 76-77, 80, 114-15. On the morning of April 17, while she was still at home, Christy was contacted by phone by division manager Floria Moore and told that the EAP meeting would take place the following Tuesday, April 21. Tr. 76; G.C. Ex. 2. Ms. Christy wanted to have the third shift senior Union steward, David Ratliff, accompany her to that meeting, so when she went to work on the night of April 17, she sought to contact Ratliff and notify him of the date and time of the meeting. Tr. 76, 100-101.

Just before her shift started on April 17, Ms. Christy went to Mr. Zepeda's office and asked if he would contact Mr. Ratliff's supervisor and ask Ratliff to meet her in the weld shop. Although she understood "the normal protocol" to require Zepeda to first notify Mr. Keiser, who would then decide whether the situation required the involvement of a steward, Christy told Zepeda that "there wasn't an issue on the floor," and that she simply needed to talk to Ratliff about the upcoming EAP meeting. Tr. 31-32, 76, 93, 133; G.C. Ex. 8. According to Christy, Zepeda agreed that he didn't need to get Mr. Keiser involved, and at some time later in the shift he contacted Ratliff's supervisor with the request for Ratliff to come to the weld shop. Tr. 76, 100, 102.⁴

Later that night, Ratliff did come to the weld shop and met with Christy, but prior to that meeting, Christy had an encounter with Keiser, which constitutes the gist of this case. There were no witnesses to the conversation between Christy and Keiser, and these two individuals offered drastically different accounts, so I will describe the testimony of the two protagonists separately. Ultimately, if Ms. Christy's version is credited, then the third shift factory manager unlawfully interfered with her right to seek assistance from the Union; if Mr. Keiser's version is credited, then he merely counseled her as to the proper way to obtain a Union representative.

Ms. Christy testified that during her midnight break (from midnight to 12:15 a.m.), she saw Keiser as she walked out of the break room at about 12:10. Tr. 79. After the other employees left, she approached Keiser and explained to him that Ratliff was going to be coming to talk to her later. She didn't want Keiser to be surprised or "freak out" if he saw her talking to Ratliff later without having cleared it in advance with Keiser. Tr. 79, 92, 97. Keiser asked Christy about the meeting with EAP and who was going to attend for management, at which point Keiser "got a little agitated with me, and he told me that if I kept

³ The General Counsel and the Respondent disputed at the hearing whether Zepeda was in fact a supervisor, but I find that question is not material to the resolution of this case, and I make no finding on it.

⁴ Christy works in the weld shop, in Building 212, while Ratliff works in the tool shop, in Building 220, which is about a 10- or 15-minute walk. Tr. 72, 91, 99, 117.

going to my union, he was going to take corrective action against me[.] . . .” Tr. 79-80, 88, 97. According to Christy, the conversation occurred just outside the break room, and Mr. Keiser did not cite the CBA or the appropriate procedures for calling a Union representative. Tr. 80-81, 89. She explained that she had sought out Mr. Ratliff to represent her at the EAP meeting, because the steward for her area “wasn’t much help to the employees on the floor [.] . . .” Tr. 77. She also insisted that at no time during that shift did she leave her work area to talk to a Union representative. Tr. 87. Ratliff came to her work area at about 3:00 a.m., at which time she told him about the EAP meeting the following Tuesday, and she also told him about Keiser’s threat to discipline her. Tr. 82. On April 21, the same day that she and Ratliff met with EAP (Tr. 7-9; G.C. Ex. 2), Christy made a written statement of what had occurred on the April 17-18 shift. G.C. Ex. 9.

Mr. Keiser testified that at the time of the disputed encounter between himself and Ms. Christy, Raymond Zepeda was serving in an acting capacity as a work leader in the weld shop, due to the promotion of the third shift supervisor. Tr. 129, 155. Zepeda had been keeping him apprised of problems in the weld shop, and these problems included the fact that a number of the employees had been taking longer breaks than they were allowed, that some employees were smoking when they were not on break, and that Ms. Christy had a habit of leaving her assigned work area.⁵ Tr. 132. Keiser testified that he spends the first two hours of the night shift working in his office, and then he begins making rounds of the buildings after midnight. Tr. 138-39. In response to Zepeda’s reported problems, Keiser said he decided to visit the weld shop more frequently, and it was some time thereafter that he saw Ms. Christy walking from the direction of the fabrication department (where her Union steward works) toward her own work area in the weld shop. Tr. 132. He asked her what she was doing, and she replied that she had to talk to her Union steward. *Id.* Keiser told her that there was a procedure for asking for Union representation,⁶ and that wasn’t a valid excuse for her to be out of her booth. Tr. 132-33. He told her that if she continued to leave her booth, he might have to take disciplinary action against her. Tr. 145, 147, 154.

Mr. Keiser could not state with any certainty the date this conversation occurred, but he was certain that there was only one occasion on which he has ever threatened Ms. Christy with discipline, and that was in the circumstances described above, when she claimed to have just spoken to her Union steward. Tr. 131, 143-44, 149. He insisted that this conversation

⁵ The weld shop consists of a line of 20 to 40 booths spanning the length of Building 212, at which one or two welders are assigned to work on particular jobs. Tr. 49-51, 131. The break room is at the east end of Building 212 (Tr. 78, 151), and Luke Saucedo, the third shift Union steward for Building 212, works in the fabrication department, in a separate area of the same building. Tr. 143-44, 148-49, 151-52.

⁶ Article 4, Section 8 of the CBA provides that employees “have the right to see a steward within a reasonable time after notifying their supervisor.” G.C. Ex. 10 at 2. Article 7, Section 2 of the CBA provides that employees “have no right to select a particular steward to represent them, but must use the steward designated to represent their team.” Resp. Ex. 1.

did not occur at or near the break room, and that he did not speak to Mr. Ratliff at all that day. Tr. 136, 144, 145-46, 151, 154-55. He also insisted that he did not threaten Christy with disciplinary action for seeking Union representation or talking to a steward, but rather for her leaving her work area without authorization. Tr. 137, 154.

Mr. Zepeda also testified, but he could not remember specific events or dates related to the incident in dispute. He recalled Ms. Christy approaching him to seek Union assistance, but he could not estimate when that occurred. Tr. 36. Many welders asked to see their steward, however, and he simply followed Keiser's instructions for such situations: he would contact Keiser by radio, let him know that an employee needed a steward, and Keiser would handle the situation from there. Tr. 36-38, 42-43; G.C. Ex. 8. Zepeda did not cite an instance in which Christy asked him to get Senior Steward Ratliff (or any other steward) directly, without going through Keiser. When Zepeda was asked at the hearing whether Christy and other employees had a habit of wandering away from their assigned work area, he exhibited distinct signs of discomfort, but when pressed, he did indicate that both Christy and other welders seemed to leave their booths more than necessary. Tr. 44-48. He recognized that many times an employee needs to go to a computer to check his work or go to the bathroom, and that it is difficult to tell whether a wandering employee has a valid reason or not. Tr. 45-46, 55-58. Zepeda appeared quite reluctant to say anything that might be perceived as critical of another employee. Nonetheless, he admitted that while he was acting supervisor, he told Keiser that he believed Christy (as well as other employees) was not staying at her booth as she should. Tr. 48.

David Ratliff, the senior steward on third shift, testified that his supervisor advised him between 1:00 a.m. and 1:45 a.m. that an employee in the weld shop had requested to talk to him, and that he went to Building 212 at about 2:30 a.m. on April 18. Tr. 100-102. Keiser saw him coming and pointed him to Christy. Tr. 100. He spoke privately with her, and she asked him to represent her at her EAP meeting the following Tuesday; she also told Ratliff that Keiser had threatened her, earlier in the shift, with disciplinary action if she "continued going to the Union[.]" Tr. 100-01. Ratliff testified that immediately after talking to Christy, he confronted Keiser with this allegation, and that Keiser confirmed that "he couldn't have his employees constantly running to the Union, and if they pursued, he would have to continue with disciplinary action against them." Tr. 101. Before he left work that night, Ratliff sent an email to Craig Flenker, the Union vice president, reporting Keiser's alleged threat to Christy and asking that a ULP charge be filed regarding this incident. Tr. 104; G.C. Ex. 11. The email further stated, "There were no witnesses to this except the employee but I know Keith has said to all employees that they are to see him and talk to him before he will get the union." G.C. Ex. 11.

DISCUSSION AND CONCLUSIONS

Positions of the Parties

General Counsel

The GC argues that Christy's testimony and account of her conversation with Keiser are more credible than Keiser's, and it insists therefore that Keiser unlawfully threatened to discipline her if she continued to seek assistance from the Union. According to the General Counsel, Christy's testimony regarding the details of the disputed conversation was clear and consistent, while Keiser's testimony was vague and his recollection poor. Indeed, the GC argues that Keiser's inability to recall details of the incident amounts to a failure to rebut the pertinent details of Christy's accusation; in the absence of rebuttal, the GC submits that Christy's allegations must be credited. It cites *United States Dep't of Transp., Fed. Aviation Admin.*, 64 FLRA 365, 370 (2009)(FAA), in this regard.

Specifically, Christy pinpointed the time of the incident as the morning of April 18, while Keiser could not say what date the incident occurred. Tr. 131, 142-43. Christy testified that the conversation occurred just outside the break room at the end of her first break, at about 12:10 a.m. (Tr. 79), while Keiser could only estimate that the conversation occurred sometime after midnight (Tr. 138) and further stated that he could not recall any conversation with Christy in the break room in which she told him she needed to talk to Ratliff. Tr. 145. The GC also argues that Keiser's testimony was inconsistent, with regard to his estimate of the time the conversation occurred and the supervisory status of Zepeda.

The General Counsel next points to the testimony of Ratliff and Zepeda as corroborating Christy's version of the incident. Ratliff testified that he came to the weld shop during the latter part of the third shift and spoke to both Christy and Keiser. First Christy described to him Keiser's statement that he would take disciplinary action against her if she continued going to the Union, and when Ratliff asked Keiser about the remarks, Keiser justified them by explaining that he couldn't have his employees constantly running to the Union. Thus the effect of Keiser's threat to Christy was magnified by its repetition, and Christy's veracity was corroborated by Ratliff. Both Ratliff's testimony and Christy's were bolstered by their having made contemporaneous written records of Keiser's threat. G.C. Ex. 9, 11. Christy's testimony about the EAP meeting was corroborated both by Ratliff's testimony (Tr. 118-19) and a letter from an EAP official confirming that the meeting did occur on April 21. Tr. 7-9; G.C. Ex. 2. In the GC's view, Zepeda's testimony, that Keiser had previously instructed him to relay all employee requests for a Union steward to him to handle, further demonstrates Keiser's intent to restrict employee communication with the Union. Tr. 31-32, 37-38.

The GC then argues that Christy was in compliance with contractual procedures for obtaining Union representation when she asked Zepeda to contact Ratliff. The GC asserted that Zepeda was acting as Christy's supervisor at the time of the April 18 incident, and notes the provision in Article 4, Section 8 of the CBA that "[e]mployees have the right to see a steward within a reasonable time after notifying their supervisor." G.C. Ex. 10 at 2. While conceding that Article 7 of the CBA restricts the ability of employees to choose which steward will represent them, the same provision also allows for exceptions (Resp. Ex. 1), and the GC notes that Christy made a point of telling Keiser that Ratliff was going to be talking to her later, and that Ratliff had frequently gone to the weld shop to represent employees there.

Finally, the General Counsel cites Keiser's words to Christy as proof that they were unlawful. He told her (according to Christy) that "if I kept going to my union, he was going to take corrective action against me [.]" Tr. 79-80. He did not cite the CBA or the contractual procedures for seeking Union representation, but rather he restricted her from the act of seeking Union representation. The clear, objective meaning of Keiser's comment was to discourage Christy from "going to [her] union," and it therefore was coercive and unlawful under section 7116(a)(1) of the Statute. *United States Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Safford, Ariz.*, 59 FLRA 318, 322 (2003)(*FCI Safford*). As a remedy, the GC asks for a cease and desist order prohibiting coercive statements and the posting of a notice to that effect to employees.

Respondent

The Respondent contends that Keiser's account of the disputed conversation is more credible than Christy's, and insists that Keiser simply warned her (appropriately) that her need to talk to a Union steward was not an excuse for her to leave her work area. Respondent concedes that Christy may have subjectively felt threatened by Keiser's restriction on her movement, and that she may not have been intentionally fabricating her testimony, but it asserts that Keiser was threatening to discipline her only for "being out of the booth, not for seeing her steward." Tr. 154. Recognizing that the standard for evaluating the lawfulness of a manager's statement under section 7116(a)(1) is not based on the subjective perceptions of either the employee or the manager, the Respondent argues that it was not objectively reasonable to draw a coercive inference from Keiser's comments. *See Marine Corps Logistics Base, Barstow, Calif.*, 33 FLRA 626, 637 (1988).

Respondent cites the parties' collective bargaining agreement as establishing a procedure that enables employees to consult with a Union representative without interfering with plant operations. *See supra* note 6. Christy did not follow that procedure if, as Keiser testified she told him, she walked from her welding booth to talk to her steward in the fabrication department. Tr. 144, 149, 151-52. Even in Christy's account of the events of April 17-18, Respondent argues that she failed to follow the procedure when she asked Zepeda, rather than Keiser, to contact Ratliff. Keiser insisted that Zepeda was not a supervisor and did not have the authority to contact a Union steward on his own, but was required to refer such requests to Keiser.

The Respondent refers to testimony that Keiser frequently permitted employees to talk to their stewards and that Ratliff had often called to talk to employees, demonstrating that Keiser had never previously exhibited the sort of opposition to Union consultation that Christy now accuses him of. Tr. 107-08, 122-24. Moreover, Christy had only started working on the third shift two months before the disputed incident, too brief a time (in the Respondent's view) for Keiser to have plausibly decided that Christy was "going to [the] union" too often. See Tr. 80; G.C. Ex. 9. Rather, the Respondent argues that Keiser was responding to Zepeda's reports of Christy wandering from her work area, and of other welders wasting time in other ways. Tr. 48, 132, 152. Keiser had found that Christy's productivity was indeed quite low. Tr. 153. Thus, when Keiser made his rounds in the weld shop and saw Christy returning toward her work area from the other end of the building, he was justifiably concerned; this concern was then verified when Christy told him she had just been talking to her steward, who worked in the area from which Christy was walking. Tr. 154. These factors all support Keiser's account of their conversation, that he was simply counseling Christy to stay in her work area and to follow the established procedure for getting a steward. Looking objectively at Keiser's words and the surrounding circumstances, Respondent asserts that Keiser's warning to Christy that she would be disciplined if she continued to leave her work area could not reasonably be interpreted as interfering with her right to obtain Union representation.

Analysis

As I noted in the Statement of Facts, this case ultimately is a question of which version of the events of April 17-18 is more credible. In Ms. Christy's account, her manager told her she would be disciplined if she "kept going" to her Union. Tr. 79-80. If I accept this account, I would find Keiser's statement to be an unfair labor practice, in accordance with the analysis laid out in many Authority decisions, including *FCI Safford*, 59 FLRA at 322; *U.S. Dep't of Agric., U.S. Forest Serv., Frenchburg Job Corps, Mariba, Ky.*, 49 FLRA 1020, 1034-35 (1994); and *Dep't of the Treasury, Internal Revenue Serv., Louisville District*, 11 FLRA 290, 297-98 (1983). According to Christy, the conversation occurred just outside the break room, while she was on a break; thus Mr. Keiser would have had no reason to counsel her for leaving her work area. In these circumstances, Keiser's alleged comment to her could only be interpreted as interfering with her right to talk to a Union representative. But in Keiser's account, the conversation occurred on the plant floor when she was not on break. According to Keiser, he told Christy that her desire to talk to a Union steward was not a valid reason to leave her work area; that she needed to follow the proper procedure for getting a steward; and that if she persisted in such conduct, he would have to take disciplinary action. Tr. 131-33, 145. If I accept this version of the incident, Keiser was seeking to prevent Christy from leaving her work area, not from engaging in protected activity, and his statement would not be unlawful. See, e.g., *Dep't of the Army, Reserve Personnel Ctr., St. Louis, Mo.*, 32 FLRA 665, 668, 673 (1988); *Fed. Mediation and Conciliation Serv.*, 9 FLRA 199, 211 (1982).

An initial review of the testimony seems to favor Ms. Christy, as her testimony is supported by Ratliff. Most crucially, Union steward Ratliff testified that later the same night that Keiser allegedly threatened Christy, Keiser repeated the threat to Ratliff. Specifically, Ratliff testified:

I finished my conversation with Jodi and then went back to Keith Keiser. And I asked him why he told Jodi Christy that if she continued going to the Union that he would seek disciplinary action. And he said he couldn't have his employees constantly running to the Union, and if they pursued, he would have to continue with disciplinary action against them.

Tr. 101. The problem with Ratliff's testimony is that he utterly failed to mention his conversation with Keiser when he sent Union Vice President Flenker an email of the incident at the end of his shift. Instead, he told Flenker:

Monday I would like to start a ULP on Keith Keiser, Friday night a [sic] employee asked to see me, the senior steward, and Keith Keiser told this employee that this was not a union matter and if they keep talking to the union he would have to take some disciplinary actions. There were no witnesses to this except the employee but I know Keith has said to all employees that they are to see him and talk to him before he will get the union.

G.C. Ex. 11. In other words, when the incident was fresh in his mind, the only conversation that Ratliff mentioned was the one he had with Christy. Not only did he fail to note that Keiser had reiterated the threat to him personally, but he failed to mention any conversation at all between himself and Keiser; on the contrary, he stated that "[t]here were no witnesses to this except the employee" *Id.* Ratliff was an experienced Union representative; he clearly understood that a threat such as the one Christy described was unlawful, and he had the presence of mind to make a written record of the incident immediately. It is incredible to me that if Ratliff had just spoken to Keiser and heard Keiser threaten to discipline employees who run to the Union, he would omit that conversation in his email. He certainly would not have stated that "there were no witnesses to this except the employee" if in fact Keiser had just said the same thing to him. I must therefore conclude that there was no conversation between Keiser and Ratliff on the morning of April 18, and that instead Ms. Christy's account must stand or fall on its own. In that light, however, it falls.

I should note at this point that by discrediting a large portion of Ratliff's testimony, I am not automatically discrediting Christy's. In other words, even if Keiser didn't repeat his alleged threat to Ratliff, he still might have made the initial threat to Christy. There certainly was a conversation between Christy and Keiser: both Christy and Keiser agree that he warned her of possible future discipline, but neither participant in that conversation can offer any corroboration as to exactly what else was said, or even as to where or when the conversation occurred. Christy said it occurred just outside the break room, as her first break was ending;

Keiser said it occurred on the plant floor, somewhere between Christy's work booth and the fabrication department. Christy testified that Keiser was standing near the break room door as she and some other welders left the room, but none of these welders were identified or called to testify. Tr. 79, 81. I can't say that I draw an adverse inference from the General Counsel's failure to call these other employees as witnesses, because this involves only one detail regarding the incident in dispute, and there may be many valid explanations for them not testifying. They certainly did not hear the conversation between Keiser and Christy, but it seems they might at least have confirmed that Keiser was at the break room at the time Christy says he was, a point that Keiser disputes. It does reduce my confidence in the accuracy of Christy's testimony, a confidence that has already been shaken by the apparent falsity of Ratliff's important testimony.

Then there is the testimony of Zepeda, a man who was truly called to perform a thankless job, a witness from whom both sides tried to extract helpful corroborating details. Not trained as a supervisor and not given the full authority of one, he was nonetheless responsible for making sure the welders had work to do and keeping them on task. He was clearly uncomfortable saying anything that might get another employee in trouble, but he still confirmed Keiser's testimony that he had told Keiser that Christy seemed to wander from her post excessively. Tr. 47-48. Although he emphasized that he made similar comments to Keiser about "other employees too[,]" it lends support to a key aspect of Keiser's testimony, namely that Keiser's comments to Christy were made in the context of her leaving her assigned work area, not in the context of "running to the Union." It corroborates Keiser's explanation of why he was making rounds of the plant and particularly looking to see whether welders were spending too much time off task, and it offers a work-related justification for Keiser's warning to Christy not to leave her booth.

On the other hand, Zepeda did not offer much corroboration to the General Counsel's case. He acknowledged that Christy approached him at least once to obtain assistance from the Union, but he could not recall any additional details, such as how often, or when, this occurred. Tr. 36-37. He was not even asked whether Christy asked him to get Ratliff directly, without going through Keiser, as described by Christy. Tr. 76. Zepeda repeatedly stated that when employees asked him for a Union representative, he notified Keiser and let the manager handle the request. Tr. 31-32, 36-37, 42-43. The GC placed considerable emphasis on the contention that Zepeda was a supervisor rather than a work leader, but I don't think this argument advances the GC's case meaningfully. While I accept the GC's premise that Christy plausibly viewed Zepeda as her supervisor (by asking him to contact Ratliff's supervisor in order to send Ratliff to the weld shop and meet with her), and accordingly that Christy was not violating the contractual procedure for meeting with Ratliff, I do not accept Christy's account that her meeting with Ratliff is what precipitated Keiser's threat to discipline her. Christy may or may not have had a conversation with Keiser near the break room regarding her need to talk to Ratliff, but I do not believe that that is where (or why) Keiser told her she faced possible disciplinary action. Rather, I believe that conversation occurred on the plant floor, when Christy was not on break: when Keiser asked

why she was out of her work area, she said she had gone to talk to her steward, and this is what prompted Keiser to warn her. While Christy and other employees have a right to talk to their Union officials, that does not give them the right to leave their work area, especially in a large manufacturing plant such as this. The established policy at the JMTC is that employees wishing to talk to a steward notify their supervisor, who then contacts the steward's supervisor, who in turn arranges for the steward to meet with the employee within a reasonable time. Tr. 36-37, 76, 93; G.C. Ex. 10.⁷ In these circumstances, Christy would not have been justified in walking over to the far end of the building to talk to her steward, and Keiser would have been justified in counseling her against such conduct.

The premise of Christy's testimony, and the General Counsel's case, is that Keiser sought to prevent Christy from meeting with a Union representative, but the evidence as a whole does not support this. It is clear from all the witnesses' testimony that employees were frequently allowed to talk to their stewards and their senior steward, and Ratliff could not cite an instance in which an employee was improperly denied such a request.⁸ Tr. 108, 122-24. Although there was evidence that Keiser had previously insisted that employees come to him with problems before going to their Union (Tr. 91-92, 119-20), the General Counsel has not alleged that this was an independent unfair labor practice, and I will not draw any inference as to the lawfulness of such conduct. I do believe, however, that Keiser's earlier comments on this matter may have made Christy somewhat defensive about her own actions on April 17 and 18, in seeking to meet with Ratliff without going through Keiser. Tr. 97. Those comments certainly played a part in Ratliff's decision to pursue a ULP charge when Christy advised him of her conversation with Keiser that night. *See* G.C. Ex. 11. But if, as Christy insists, she told Keiser, while she was on break, that she needed to talk to Ratliff about an upcoming EAP meeting, it does not explain why Keiser would interpret that EAP meeting as "constantly running to the Union," as Ratliff put it. Tr. 101. Even if Keiser wanted the chance to resolve employee complaints before they consulted the Union, Christy's EAP meeting, which had already been arranged by plant management and related to events that occurred when Christy worked on the day shift, was not something that Keiser could have resolved, and it doesn't make sense that it would have drawn Keiser's ire. A much more plausible explanation is that Christy's discussion with Keiser during the April 17-18 shift related to Christy being in an area of the plant that was far from her work area, at a time when she was supposed to be working. I find it much more likely that Keiser was attempting to keep Christy at her workstation than that he was trying to prevent her from having a Union representative at an EAP meeting.

⁷ Christy certainly understood this policy; indeed, she testified that she followed the policy before talking to Ratliff, and she denied leaving her work area to talk to a steward during the April 17-18 shift. Tr. 87. But if Keiser's version of the events is correct, she did violate the policy.

⁸ The only instances he cited were on weekends, when no stewards were available. Tr. 107-08.

Keiser's uncertainty about many of the details of the events of that night are not surprising to me, and they do not weigh against his credibility, in my view. There is no evidence that Keiser was aware that the Union was challenging his conduct of April 17-18 until the Union's unfair labor practice charge was filed on June 15, and there is little about the circumstances of the disputed conversation that would have made it stand out in Keiser's mind, other than that he had warned Christy about behavior that could result in disciplinary action. What did stand out for Keiser were the problems that Zepeda was having in keeping welders in general, and Ms. Christy in particular, focused on their work; it therefore makes sense that Keiser would recall the details of his warning to her, even while he could not recall the date or time that the conversation occurred. It is perfectly logical, months after the events in dispute, that Keiser would still recall warning an employee of potential disciplinary action, and Zepeda's complaints about the behavior of that employee, while numerous other possible conversations with that employee and others would be totally unmemorable. The GC's invocation of the *FAA* decision in this regard is inapposite. Unlike the facts of the *FAA* case, 64 FLRA at 370, Keiser did rebut material aspects of Christy's testimony: he testified that there was only one instance in which he threatened to take disciplinary action against Christy, and that was because "she was out of her workstation." Tr. 131. He then proceeded to describe specific details of the ensuing conversation. Tr. 131-33, 143. While Keiser's testimony may have been vague with regard to some details, his recall of the pertinent aspects of the disputed events was more credible to me, and it is more plausible within the full context of the record, than Christy's or Ratliff's.

Specifically, I find that Mr. Keiser did not tell Ms. Christy that she would be disciplined if she kept going to the Union, or words to that effect. Rather, he counseled her to remain in her work area, and told her that if she wanted to talk to a Union steward, she should notify her supervisor. In the circumstances of this case, his statement to her was lawful.

For all of the reasons stated herein, I conclude that the Respondent did not commit the unfair labor practice alleged, and I recommend that the Authority issue the following Order:

ORDER

It is ordered that the complaint be, and hereby is, dismissed.

Issued, Washington, D.C., March 25, 2011.

RICHARD A. PEARSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. CH-CA-09-0533, were sent to the following parties:

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Dated: March 25, 2011
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