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Federal Labor Relations Authority

Interference with Protected Rights

*The Federal Service Labor-Management
Relations Statute*

Interference – The Legal Basis

- 5 U.S.C. § 7102 Employee's Rights
 - Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal.

Examples of Protected Activity

- Filing a grievance
- Asserting a contract right
- Requesting union representation
- Representing the union in a matter
- Attending union meetings
- Refusing to join a union
- Executing a dues allotment
- Testifying at an arbitration hearing

See 5 U.S.C. § 7102 (form, join, or assist, or refrain from such activity); see also U.S. Dep't of the Air Force, Aerospace Maintenance & Regeneration Ctr., Davis Monthan Air Force Base, Tucson, Ariz., 58 FLRA 636 (2003); U.S. Dep't of Labor, Employment & Training Admin., S.F., Cal., 43 FLRA 1036 (1992) .

Interference by An Agency

- It is a violation of § 7116(a)(1) for an agency to interfere with, restrain or coerce an employee in the exercise by the employee of any right under the Statute.
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Objective Standard

- While the circumstances surrounding the making of the statement(s) are taken into consideration, the standard is not based on the subjective perceptions of the employee or on the intent of the management representative.

U.S. DOJ, Fed. Bureau of Prisons, FCI, Safford, Ariz., 59 FLRA 318 (2003) (citing *Dep't of the Air Force, Scott Air Force Base, Ill.*, 34 FLRA 956 (1990)).

Examples of this conduct:

- *Threatening* employees with reprisal if they exercise their rights under the Statute.
 - *Fed. Election Comm'n*, 6 FLRA 327 (1981).
 - Making implied threats against union representatives for assisting employees in filing and prosecuting grievances under the negotiated grievance procedure.
 - *U.S. Penitentiary, Florence, Colo.*, 52 FLRA 974 (1997).
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Free Speech Proviso

- Personal opinions are protected

- 5 U.S.C. § 7116(e) states:

The expression of any view, argument, opinion or the making of any statement which –

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by the person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

Shall not, if the expression contains no threat or reprisal of force or promise or benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provision of this chapter.

Interference by a Labor Organization

- It is a violation of § 7116(b)(1) for a labor organization to interfere with, restrain or coerce an employee in the exercise by the employee of any right under the Statute.
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Examples of this conduct:

- Letter informing employee that if the employee and other non-members became members of the union, then their views would have been heard and counted regarding the seniority policy.
 - Under the circumstances the union conveyed the impression that non-member views did not count.
 - *NATCA, MEBA/AFL-CIO*, 55 FLRA 601 (1999).
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