

OFFICE OF ADMINISTRATIVE LAW JUDGES WASHINGTON, D.C. 20424

.....U.S. INFORMATION SYSTEMS COMMAND.PRESIDIO OF SAN FRANCISCO
.SAN FRANCISCO, CALIFORNIA .
Respondent . and . Case No. 9-CA-10654.AMERICAN FEDERATION
OF .GOVERNMENT EMPLOYEES, .LOCAL 1457, AFL-CIO . Charging Party

Jere Diersing, Esq. For the Respondent Stefanie Arthur, Esq. For the General Counsel
Before: ELI NASH, JR. Administrative Law Judge

DECISION

Statement of Case

This case arose 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., (herein the Statute). On an unfair labor practice charge filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the San Francisco Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated section 7116(a)(1), (2) and (4) of the Statute by issuing a 14-day suspension to an employee because of his protected activities, including the participation in unfair labor practice proceedings.

A hearing on the Complaint was conducted in San Francisco, California at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence I make the following:

Findings of Fact

1. Edward E. Robinson at all times material herein was employed as a printing clerk at Respondent's Print Plant at the Presidio.⁽¹⁾ While employed at the Presidio, Robinson served as a shop steward and as the Union's U.S. Army Information Systems Command (herein called USAISC) unit vice president.

2. The Union at all times material herein, represented a unit of employees of Respondent which included employees in the Print Plant of the USAISC.

3. At all times material herein, Clayton Chong was Foreman of Respondent's Print Plant and Robinson's immediate supervisor. Captain Griffin J. Barkie was Respondent's Director and Betty Gannon was Deputy Director.

4. During 1989 and 1990, Robinson filed grievances against Chong and other Respondent officials, including Barkie. During that same period, Robinson also filed unfair labor practice charges, including one

filed in December 1990, and he participated in unfair labor practice investigations.

5. On March 18, 1991,⁽²⁾ Robinson was scheduled to participate in the investigation of an unfair labor practice charge filed by the current USAISC unit vice president Kevin Blackwell.

6. As a printing clerk, Robinson approved or disapproved all printing orders which were submitted. His job did not require him to use a government vehicle. Although Robinson was not required to use a government vehicle one was available which he occasionally used to drive to other areas of the Presidio. Robinson also used the government vehicle to fill in for the printing specialist, Gwen Horn, when she was not available for some reason. When he filled in, Robinson was required to travel off post to the Government Printing Office. Because of his occasional use of a government vehicle, Robinson, along with all of the employees of the Print Plant, was issued a government/military driving license. However, Robinson never received any materials or instructions about maintaining his license.

7. Employees are required to show their government license when they are issued vehicles by the motor pool. Since, Robinson rarely checked out a vehicle from the motor pool, he was unaware that his license had expired on February 18 until March 12 when asked about it by his supervisor, Chong. At that time, Chong, asked both Horn and Robinson about their licenses, and told Robinson that he was scheduled for a Driver Accident Prevention Course (DAPC) on March 20.⁽³⁾ The memorandum scheduling Robinson to attend the DAPC course is silent concerning procedures for obtaining an extension of an expired government license and Chong said nothing to Robinson about obtaining an extension of his license while waiting to attend the DAPC course.

8. On March 18,⁽⁴⁾ Robinson was scheduled to be a witness in the investigation of an unfair labor practice charge. Originally, the investigation was scheduled at the union office on the Presidio, an office to which Robinson could walk. Sometime, prior to March 18, Robinson was notified that the investigation would be held at Respondent's headquarters building on the Presidio, a building located in the upper Presidio area, at least a mile from the lower area in which the Printing Plant is located. During this period, Robinson did not have his own automobile. Robinson therefore, made arrangements with Horn to drive him to the investigation. Horn, the printing specialist, used a government vehicle regularly in the course of her job and routinely checked out a vehicle each day from the motor pool. However, when Robinson was about to leave for the unfair labor practice investigation, Horn was too busy and was unable to leave. She gave Robinson the keys, told him to take the car himself but to be sure to be back by 3:30. Horn testified that she was not aware that Robinson did not have a valid driving license.

9. Robinson took the keys, walked to Chong's office, knocked, opened the door, stepped in and, holding up the keys, told Chong that he was going to ISC and that he was taking the military vehicle. The keys to the government vehicle, which were on a big round key ring with a blue pouch holding the government credit card, are unmistakable. Chong told Robinson that he thought he had already gone and told Robinson to "get out of here." While Horn did not hear what Robinson said to Chong at the time, her testimony corroborated Robinson's account that he did go to Chong's office and gestured with the keys, in a manner which Chong could not mistake, before leaving.

10. Upon returning to the Print Plant later that afternoon, Robinson was told by Chong that he was going to "write him up" for using the government vehicle. Horn recalled that upon Robinson's return, Chong told

Robinson, "he was going to get him because he had driven the car and he didn't have a license, and he just ranted on and on about some things." The following day, March 19, Chong submitted a request for disciplinary action against Robinson for taking the government vehicle without a "valid government license in his possession."⁽⁵⁾ Furthermore, though Chong was fully aware that the government vehicle had been issued to Horn, who was responsible for it, he never considered disciplining Horn for permitting Robinson to use the vehicle. It is worthy of note that Chong's testimony, reveals that he thought Horn knew that Robinson's license had expired. Thereafter, on April 5, Respondent issued a proposed 30-day suspension, signed by Chong, to Robinson for unauthorized use of a government vehicle. Robinson received his copy of the proposal from Chong on April 8, in the presence of union representative Kevin Blackwell.

11. Following receipt of the proposal, Robinson researched some of the references and prepared a rebuttal to the proposal which he delivered to Barkie.

12. On April 29, with Blackwell present to represent Robinson, Chong presented Robinson with an April 26, 1991 memorandum withdrawing the April 5 proposed suspension. Attached to the April 26 withdrawal letter was a copy of the original April 5 proposal.

13. The August 6, withdrawal letter states that "a new Proposed Suspension letter is being prepared for you" but Robinson was unaware that any new proposal had issued until May 28, when he received a Decision on Proposed Action. Only then, attached to this decision, did he learn that another proposed 30-day suspension had issued.

14. The revised proposal modified the charge against Robinson from "unauthorized use of a government vehicle," a charge carrying a mandatory 30-day suspension, to "operating a government vehicle without a valid government license."⁽⁶⁾ The revised proposal included some additional references and revised facts⁽⁷⁾ but since he never received the revised proposal, Robinson had no opportunity to respond. The final decision, sustaining a 14-day suspension, was issued by Barkie. The decision references no Army regulation to support either the charge or the discipline imposed. Moreover, when questioned, Barkie was unable to offer any regulatory basis for his decision and, in fact, stated that he did not believe there were any Army regulations covering civilian use of military vehicles. While Bobby Joe Lyles, Chief, Transportation Branch at the Presidio testified for Respondent concerning detailing use of government vehicles, there was no evidence that either Chong, Barkie or anyone from Employee Relations ever consulted with Lyles concerning the penalties for misuse of government vehicles contained in both the proposal and the final decision to suspend Robinson on the driver's license charge. Having Lyles testify appears to be an afterthought by Respondent to add a blessing to its position on the suspension. Barkie's investigation of the charges against Robinson, if any, was superficial: He did not investigate the facts, other than as asserted in the proposal, in order to ascertain the truth; and he never once considered that the individual to whom the vehicle was issued was censurable for permitting Robinson to drive the vehicle with an expired government license.

Conclusions

This is a Letterkenny Army Depot, 35 FLRA 113 (1990) case which also contains a section 7116(a)(4) allegation. The Letterkenny analysis is also applied to section 7116(a)(4) violations.⁽⁸⁾ In order to prevail the General Counsel must make a prima facie showing that: (1) the employee against whom the alleged

discriminatory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the agency's treatment of the employee in connection with hiring, tenure, promotion, or other conditions of employment. As part of its prima facie case, the General Counsel may also seek to establish the Respondent's asserted reasons for taking an alleged discriminatory action are pretextual.

After the required prima facie showing of discrimination based on protected activity, an agency can avoid a violation of the Statute by demonstrating, by a preponderance of the evidence, that there was legitimate justification for its action and the same action would have been taken even in the absence of the protected activity.

In its brief, Respondent managed to argue that the General Counsel had not met its burden of proof and the disciplinary action based on Robinson's failure to follow the guidelines, of which he was aware, for use of a government vehicle was justified. Respondent also seeks to raise, albeit in a roundabout way, several reprimands given to Robinson by Chong shortly before the instant action. Finally, Respondent asserts that the same action would have been taken whether or not Robinson engaged in protected activity.

It is my opinion that the General Counsel met its burden of showing a prima facie case in this matter. Additionally, the General Counsel argues that the reasons asserted by Respondent were "pure pretext". Thus, according to the General Counsel, Chong knew that Robinson's government license had expired, but granted him permission to take the government vehicle to an unfair labor practice interview. Further, it is contended that even if Chong mistakenly permitted Robinson to take the government vehicle, although if he did not remember at the moment that Robinson's license had expired, the actions of Chong and Barkie in suspending Robinson while relying on an irrelevant memorandum disproves any legitimate basis for its action. Additionally, it is argued that the failure to even consider disciplining Horn, who after all, was the person responsible for the vehicle, since she signed out for it, exposes the pretextual nature of the action taken by Respondent.

The record clearly shows both Chong and Barkie's distaste for Robinson. In fact, Robinson had been reprimanded by Chong on two earlier occasions which coincidentally, also occurred around the time Robinson was pursuing protected activity. It is barren, however, of any reason for this enmity other than the protected activity engaged in by Robinson. In such circumstances, the justification for Respondent's action against him must be carefully examined. Close scrutiny of the justification offered by Respondent reveals that it was pretextual. For the reasons set out below, the undersigned is in agreement with the General Counsel that Respondent violated section 7116(a)(1), (2) and (4) of the Statute.

It is undisputed that Robinson was engaged in protected activity and that Respondent had knowledge of his protected activity. Thus, the record evidence reveals Robinson as an active union steward who had filed grievances against his supervisors, one of whom was Chong and Respondent's Director Barkie, and who also had filed charges and participated in unfair labor practice proceedings. It is also noted Robinson participated in an unfair labor practice investigation, on approved official time, which directly preceded the discipline involved in this case. Hence, Respondent's Deputy Director notified Robinson where his unfair labor practice interview would be conducted and his supervisor released him on official time to attend the interview. Accordingly, it is found that Respondent had ample knowledge of Robinson's participation in all sorts of protected activity, as well as his participation in the unfair labor practice investigation on March 18. Robinson's testimony that he told Chong that he was taking the vehicle is corroborated by Horn. This, however, is not the sole reason for accepting Robinson's account of what occurred at the time rather than

Chong's recollection.⁽⁹⁾ Chong's testimony is replete with inconsistencies and vague denials making it difficult to credit him in this matter. Even assuming that Chong did not hear Robinson or as Robinson himself suggests, the fact that Robinson's license had expired did not occur to Chong until later, Chong's actions upon discovering that Robinson had taken the vehicle are enigmatic and strengthen the idea that the true motive of his subsequent proposed discipline against Robinson was discriminatory. Thus, Chong called Barkie to determine whether Robinson's driving with an expired license was improper but, when Barkie answered in the affirmative (although neither Barkie nor Chong ever knew what regulation it violated), never even considered having Barkie tell Robinson not to drive back; and although he immediately accused Robinson, Chong, as previously noted, never considered investigating or questioning whether Horn had violated some regulation for lending the vehicle to an unlicensed driver despite the fact that by Chong's own account, he thought that Horn knew that Robinson's license had expired. Respondent's own witness, Lyle, testified that this was an even more serious offense. Moreover, as discussed below, the severity of the discipline imposed, when others are not disciplined at all for similar or more serious conduct, supports a finding of Respondent's disparity of treatment of these two individuals, and warrants an inference that Respondent's discipline of Robinson was motivated by unlawful considerations.⁽¹⁰⁾

In contemplating the basis for Robinson's suspension, in my view, Respondent presented no valid regulatory justification for either the proposals or the decision to suspend. This lack of justification goes a long way toward establishing the real motivation behind its decision to take action against Robinson. Interestingly, Respondent witness John Sergeant, Chief of Personnel Relations at the Presidio and others testified that they did not recall any actions being taken at the Presidio against an employee for using a government vehicle without a proper driving license. Possibly because this is not a violation and, if so, it is one which is such an unimportant infraction it would readily be ignored.

Both the proposed suspensions and the final decision reference Title 5 of the Code of Federal Regulations, Part 930. In my reading, nothing in that part requires that an employee who is defined as an "incidental driver," have a government license to drive a government vehicle. Although 5 CFR § 930.102 defines "Identification card" as a "United States Government Motor Vehicle Operator's Identification Card, Optional Form 346, or an agency-issued identification card that names the types of Government-owned . . . vehicles the holder is authorized to operate", § 930.112 requires only that an incidental operator have a "valid agency identification card or document (e.g. building pass or credential) in his or her possession at all times while driving" a government-owned vehicle. Furthermore, 5 CFR § 930.111 requires only that an incidental operator have a valid state license in his or her possession at all times while driving a government-owned vehicle "on a public highway." It is also worthy of note, that while Part 930 does require incidental drivers to have a valid government license or "identification card," it also contains no reference to any penalty for driving with an expired government license.

Under 5 CFR § 930.110, each agency is required to have procedures to identify employees authorized to operate government vehicles. Respondent's witness, Bobby Joe Lyles, testified that an Army regulation, AFR 600-55 requires an employee have a valid government license in his possession while driving a government vehicle but the relevant sections of this regulation were neither produced at hearing nor relied on in issuing the discipline. Further, although Lyles testified that his office issued instructions concerning the issuance of driving licenses for employees working at the Presidio, none of these instructions were produced at hearing or relied on for the suspension. In fact, although Lyles is a purported expert on the matter for which Robinson was suspended, there is no evidence whatsoever that Lyles was ever contacted or consulted by Chong, Barkie or civilian personnel concerning Robinson's disciplinary action.

In addition, both proposals and the final decision reference a section of the California driver's manual which, requires an individual driving on the public highways to have a valid California license. Robinson, as already noted, was licensed to drive in California. Since Robinson used the vehicle only on the Presidio, Respondent's reliance on this reference appears to be contrived. Similarly, the bulletin notices relied on by Respondent in proposing the suspension, say nothing of the requirements for obtaining and maintaining a government license, except that employees are required to take the accident prevention course every four years. The bulletin notices also are silent about any penalty for driving with an expired license; and, silent about procedures for obtaining an extension of one's license should a license expire prior to attending the accident prevention course although extensions are available. Moreover, in response to General Counsel's subpoena, Respondent admittedly provided no documents to items 3 and 4 requesting all information provided to USAISC employees and Robinson in particular, concerning the requirements for obtaining, retaining, extending and/or renewing a government/military driving license. Hence, the absence of any evidence that Respondent relied on a valid Army regulation for the proposal or the final decision to suspend Robinson, along with its reference to an irrelevant section of the California driving code, certainly creates considerable doubt that it had any genuine reason to discipline Robinson thereby, supporting the General Counsel's position that its reasons for disciplining Robinson were pretextual.

Respondent's witness, Lyles, also made it clear that the individual to whom a government vehicle is issued becomes primarily answerable for the vehicle and bears responsibility to insure that no unlicensed drivers use the vehicle. According to Lyles, the individual to whom the vehicle is issued commits the greater offense by allowing the vehicle to be misused than the individual who drives without a valid license. Respondent offered no cogent reason why it never considered and did not propose any discipline for Horn, who allowed Robinson to use the vehicle, notwithstanding Horn's alleged awareness that Robinson's license had expired.

The severity of the disciplinary process in this case further exposes the pretextual nature of Respondent's action. While General Counsel concedes that progressive discipline might warrant the issuance of a suspension to an employee with two prior reprimands for a further case of misconduct, in this case, as discussed above, there was no basis at all for any discipline. Here, the issuance of the two previous reprimands to Robinson for unrelated actions were suspiciously close to other protected activity by him. Incredibly close because it was only after Robinson began filing unfair labor practice charges in 1990 that Respondent began raising disciplinary issues with him. Particularly revealing also because Chong and Robinson it appears from the record never had a good personal relationship. Further, those actions did not involve a government vehicle. Therefore, I reject Respondent's claim that Robinson's actions showed any "trend that must be addressed", as stated by Barkie in the disciplinary action. In all the circumstances, including Chong's management style as described by Horn, it is my view that Chong was desperately trying to build a case against Robinson, for filing grievances and unfair labor practices using any reason he thought might work. Thus, the proposed 30 days, even reduced to a 14-day suspension, for what appears merely to be a technical violation, if anything is unmistakably severe, particularly since Respondent produced no evidence of any regulations establishing any penalty at all for this alleged offense.

Finally, the timing of the discipline relative to Robinson's protected activity provides another reason for inferring unlawful motivation.⁽¹¹⁾ In this case, not only had Robinson been involved in representational matters shortly before March 18, but on that day, he used the government vehicle to participate in an unfair labor practice investigation. Standing alone, this timing might not establish Respondent's unlawful motivation, however, when considered with other factors in the matter, including the disparity of treatment and Respondent's disregard for regulations or procedures, it becomes much easier to see that Respondent's decisions to propose a 30-day suspension and the decision to issue a 14-day suspension was motivated by Robinson's protected activity.

In light of the record evidence establishing that the justification offered by the Respondent in this matter was pretextual, it is found that Respondent failed to establish by a preponderance of the evidence that it had a legitimate justification for suspending Robinson. Accordingly, it is found that Respondent did not meet its burden of showing that it would have suspended Robinson for 14 days in the absence of his protected activity. In this regard, it is noted that even if a regulatory or other basis for issuing discipline to an individual who drives a government vehicle without a valid government license exists, the instant evidence fails to establish that Respondent would have issued any discipline to Robinson in the absence of his protected activity. Again it is noted, the only individual with any knowledge of the applicable regulations, Lyles, was not contacted or consulted prior to issuance of the proposal or final decision to suspend. Under these circumstances, Respondent clearly did not rebut General Counsel's evidence that it proposed to suspend Robinson and issued the final 14-day suspension, because of Robinson's activities protected by the Statute, including his participation in an unfair labor practice investigation. Therefore, Respondent's issuance of the suspension to Robinson is found to be an unfair labor practice in violation of section 7116(a)(1), (2) and (4) of the Statute.⁽¹²⁾

Based on the foregoing, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, the U.S. Information Systems Command Presidio of San Francisco, San Francisco, California, shall:

1. Cease and desist from:

(a) Discriminating against Edward E. Robinson, or any other employee, because of his activities protected by the Federal Service Labor-Management Relations Statute by issuing a fourteen-day suspension.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured them 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) Rescind the suspension issued to Edward E. Robinson on May 28, 1991 and expunge the document from all agency records, including any records which have already been forwarded to the Defense Printing Service or any other agency.

(b) In accordance with the Back Pay Act, 5 U.S.C. § 5596, make Edward E. Robinson whole for any loss of pay or benefits suffered as a result of the unlawful suspension, including payment of backpay, with interest, for the dates he served the suspension.

(c) Post at its facilities at U.S. Army Information Systems Command, Presidio of San Francisco, San Francisco, California, 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 Commander 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, July 23, 1991, Washington, DC

ELI NASH, JR.

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 discriminate against Edward E. Robinson, or any other employee, because of his activities protected by the Federal Service Labor-Management Relations Statute by issuing a fourteen-day suspension.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL rescind the suspension issued to Edward E. Robinson on May 28, 1991 and expunge the document from all agency records, including any records which have already been forwarded to the Defense Printing Service or any other agency.

WE WILL in accordance with the Back Pay Act, 5 U.S.C. § 5596, make Edward E. Robinson whole for any loss of pay or benefits suffered as a result of the unlawful suspension, including payment of backpay, with interest, for the dates he served the suspension.

(Activity)

Dated: _____ By: _____

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of the posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone number is (415) 744-4000.

1. Respondent's Print Plant has now become part of the new Defense Printing Service (DPS). Robinson and the other unit employees have since the incidents alleged herein transferred to the DPS facility at Naval Supply Center, Oakland, California.

2. All dates hereafter are 1991 unless otherwise noted.

3. Chong's denial that he saw the memorandum scheduling Robinson for the DAPC class on March 20, before March 18 and his assertion that on March 18, "as far as I know, he wasn't even scheduled [for the DAPC]" is inconsistent with his statement in both suspension proposals that "I told you that I had scheduled you to attend the DAPC on 20 Mar 91." Because this is merely one of the inconsistencies in his testimony, it is difficult to

credit Chong.

4. Robinson's uncontroverted testimony was that he never saw any revised proposal until he received the final decision in May. Whether or not the Union was sent a copy of the revised proposal is irrelevant.

5. It should be noted that on March 18, Robinson had a valid California state driving license and a Department of the Army identification card. Furthermore, two days later, on March 20 Robinson attended the DAPC course, as scheduled, and had his government license renewed.

6. Barkie testified that he requested the original proposal be revised since he considered the mandatory 30-day suspension required by the original charge too harsh. It is noteworthy, that despite Barkie's protestations, the revised proposal was also for 30 days. While Barkie reduced the suspension to a

14-day suspension, since neither proposal nor the final decision cited any legitimate regulatory basis for any charge against Robinson, leaving doubt that Barkie's input into a new proposal was as charitable as he would have one to believe.

7. It is of some interest that the revised April 26 proposal, although purportedly considering Robinson's April 12 statement, only modified certain facts, such as when Chong supposedly learned that Robinson's license had expired, facts which should have been known to Chong initially.

8. Department of Veterans Affairs Medical Center, Brockton, Massachusetts, 43 FLRA 784 (1991).

9. Gary Smith, a press leaderman, testified that he was working at the Print Plant when the incident between Robinson and Chong occurred. When asked whether he was working at the plant on March 18, he confidentially stated, "If it was a Saturday or Sunday I was." I take judicial notice of the 1991 calendar which shows that March 18, 1991 was a Monday and based on Smith's own testimony he would not have been present during that time.

10. 10/ Pension Benefit Guaranty Corporation, 39 FLRA 905 (1991); See also Department of the Navy, Navy Resale System, Field Support Office, Commissary Store Group, Norfolk, Virginia,

16 FLRA 257 (1984); Department of Transportation, Federal Aviation Administration, Boston Air Route Traffic Control Center, Nashua, New Hampshire, 11 FLRA 318 (1983).

11. United States Customs Service, Region IV, Miami District, Miami, Florida, 36 FLRA 489, 495-496 (1990).

12. Letterkenny, supra, at 120; See also Department of Transportation, Federal Aviation Administration, El Paso, Texas, 39 FLRA 1542 (1991).