

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION
ADMINISTRATION, OFFICE OF AVIATION SYSTEMS
STANDARDS, OKLAHOMA CITY, OKLAHOMA
Respondent

Case Nos. AT-CA-30391

AT-CA-30392

AT-CA-30393

and
PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS,
AFFILIATED WITH MEBA/AFL-CIO
Charging Party

Richard Schamahorn For the Respondent
Richard Cantu For the Charging Party
Richard S. Jones, Esq. For the General Counsel
Before: SALVATORE J. ARRIGO Administrative Law Judge

DECISION

Statement of the Case

This matter 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).

Upon unfair labor practice charges having been 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 Atlanta Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by failing to select three employees for a position involving a promotion because the employees engaged in activities protected by the Statute.

A hearing on the Complaint was conducted in Atlanta, Georgia, at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally.⁽¹⁾ 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

At all times material the Union has been the exclusive collective bargaining representative for various of Respondent's employees, including employees working at Respondent's Atlanta Georgia Flight Inspection Field Office (the Atlanta FIFO). An explanation of the structure and operation of a FIFO is contained in an exhibit and will be helpful in understanding the terminology used herein. Thus, the Agency letter dated prior to the changes implemented herein states, in relevant part:

"As background information, the FIFOs are responsible for the inspection and airborne certification of air navigation facilities such as instrument landing systems, nondirectional beacons, and radar beacon systems. Each flight inspection mission is accomplished using a crew of three: an Airspace System Inspection Pilot, GS-2181-13, (Aircraft Commander), an Airspace System Inspection Pilot, GS-2181-13, and an Airborne Electronics Technician, GS-856-12. Each FIFO has . . . ASIP positions which are assigned Aircraft Commander duties and . . . ASIP positions which are assigned procedures development duties and serve as co-pilot on flight inspection missions.

An Aircraft Commander is assigned responsibility for all aspects of the flight inspection mission such as determining what facilities to inspect and the order in which they will be inspected, determining if a specific facility needs to be rechecked before certification, and actually certifying the facility as within required tolerances. In addition to this, the Aircraft Commander is assigned PMRS supervisory responsibilities such as authorizing overtime during flight inspection missions, recommending disciplinary action and rewards for the flight crew, and recommending selection and promotion of pilots."

In March 1992 the Union was notified by Respondent that the Aircraft Commander's position would be upgraded. A letter to the Union from management, dated March 5, stated, interalia:

"As discussed in (a prior) conversation, we are in the process of establishing new

Airspace System Inspection Pilot (ASIP) positions at the FIFO's with increased

authority and accountability for flight inspection missions. These Aircraft Commander

positions will have a stronger supervisory role and will be classified as ASIP, GM-

2181-14. Plans are to advertise the new positions through AVN-wide Merit Promotion

Plan announcements as soon as the position descriptions are finalized and classified.⁽²⁾

"The present ASIP's GS-2181-13, performing Aircraft Commander's duties will be

phased out when the new positions are filled. No adverse impact is anticipated on any

FIFO employees as a result of this action.

"The position of ASIP, GS-2181-13, performing predominantly procedures work in

each FIFO will retain the current classification as Airspace System Inspection Pilot,

GS-2181-13. . . ."

On June 10, 1992 Respondent issued a Position Vacancy Announcement for the new job which was located at the Agency's nine FIFO's including Atlanta, Georgia. Identical requirements of knowledge, skills, abilities and other characteristics (KSAOs) were applicable and employees in one FIFO were allowed to apply for a GM-14 position in another. The Union and Respondent signed a Memorandum of Understanding (MOU) on June 25 addressing the situation where a incumbent Aircraft Commander GS-13 did not get selected for promotion to the GM-14 position, by providing, inter alia:

"Any incumbent GS-2181-13 Aircraft Commander at a particular FIFO not selected

for a GM-2181-14 Aircraft Commander position at that FIFO will be provided a

written statement from the selecting official within fifteen (15) days of the date selections

are made specifically stating the reasons why the employee was not selected."

The MOU also provided that any displaced incumbent Aircraft Commander would be reassigned to the Flight Procedures Inspection Section (GS-13) and be given training to perform the new duties of that position.

Applications for the GM-14 positions were submitted by July 1, 1992 to Respondent's Employment Branch in Oklahoma City, Oklahoma where they were evaluated by a rating panel against the KSAOs established for the position, which were: 1. Skill in Aircraft Operation; 2. Interpersonal Skills;

3. Ability to Analyze and Evaluate; and 4. Knowledge of Technical Flight Inspection. That panel gave a perfect rating of 48 to Atlanta GS-13 Aircraft Commanders Leonard Burger, John Hollowell and Lloyd Hiraoka, among others.

In Atlanta, the Acting FIFO Manager, Nevin Summers, also rated Burger, Hollowell and Hiraoka, as well as other applicants using, however, descriptive terms of "Superior", "Satisfactory", "Barely Acceptable", or "Not Observed" when evaluating them against the four KSAOs. In those ratings, which occurred between June 17 and June 22, 1992, Summers rated the three Aircraft Commanders as "Satisfactory" on each of the KSAOs while giving "Superior" ratings to five other Atlanta FIFO applicants; employees Sauble, Herndon, Epperson, Tyre, and McCartha.⁽³⁾

Sometime in July 1992 Gary Wirt became the Manager of the Atlanta FIFO. Shortly thereafter he received the list and data pertaining to all the eligible candidates for the Aircraft Commander GM-14 positions in Atlanta and passed the information on to Summers, who had now reverted to the position of Supervisor of Flight Operations and Scheduling Section. Six GM-14 positions were available at the Atlanta FIFO and, following a review of the 16 applications, Summers made his recommendations to Wirt. After discussing the matter, Wirt was not convinced that Summers had evaluated the candidates using satisfactory criteria and Wirt thereafter developed criteria for Summer to apply in making his recommendations. Candidates were to be evaluated by Summers on a scale of 1 to 10 on each of the following items:

A. Employee has a through knowledge of the guidelines, policies, and standards in

his or her own area of expertise and has demonstrated the ability to function and

comply within this structure.

B. Employee has an understanding of work related to, but outside, his or own

technical area.

C. Employee has exhibited skills in teamwork and/or leadership while working with

others.

D. Employee demonstrates the necessary writing skills to accomplish his or her

assigned work.

E. The employee has the ability to orally communicate technical information.

F. Employee has demonstrated the ability to plan and organize his or her activities

so that the assigned work was accomplished in the most effective manner.

G. Employee understands the AVN mission and is supportive of the goals

established by AVN to accomplish this mission.

H. Employee is knowledgeable in the concepts of TQM and is committed to

providing the highest standard of service to our customers.

Summers' rating of the candidates for the GM-14 positions using the criteria above resulted in the following evaluations:

Category	A	B	C	D	E	F	G	H	Total
McCartha	10	9	10	6	8	9	9	10	71
Epperson	10	10	8	6	9	10	10	9	72
Hamilton	10	10	9	8	8	9	8	9	71
Herndon	10	9	8	8	8	10	9	10	72
Sauble	10	10	8	8	9	10	9	10	74
Tyre	10	10	10	8	8	10	9	10	75
Hiraoka	9	8	5	5	3	7	8	9	54
Burger	7	5	7	9	7	4	3	3	45
Cooper	7	8	9	10	9	9	9	9	70
Hollowell	6	5	7	3	4	6	7	8	56
Draper	8	6	7	8	7	8	9	8	61
Newman	9	8	8	7	9	9	9	9	68

Summers recommended to Wirt that the promotion to GM-14 be given to McCartha, Epperson, Hamilton, Herndon, Sauble and Tyre, and on July 30, 1992 Wirt, relying on Summers' recommendations, selected those employees for the promotion.⁽⁴⁾

On October 28, 1982 Lawrence Sump, a National Representative of the Union and Leonard Burger, who was also the Atlanta FIFO PASS representative, met in Oklahoma City, Oklahoma with Mr. McIlwain, Respondent's Division Manager, and Manager of Atlanta FIFO Wirt. The purpose of the meeting was to determine if the new job description for the grade 14 Flight Commander needed to include supervisory language and also to discuss why three incumbent Aircraft Commanders (Burger, Hiraoka and Hollowell) were not selected to receive the upgraded Aircraft Commander position. When the discussion came to the non-selection of the three Atlanta Aircraft Commanders, management insisted that Burger not be present, taking the position that since all three individuals were not present, they did not wish to conduct the meeting with just Burger present. Accordingly, Sump met alone with the two management representatives who started the discussion of this topic by explaining

they had devised a list of criteria which was used to evaluate the candidates.

Sump was refused a copy of the criteria. Sump found the criteria to be very general and subjective and, as the criteria were being read, Sump asked what the "real reason" was that the three were not selected. Management responded that the three Aircraft Commanders were not "team players." The conversation then centered specifically on Burger's not being a "team player" and when Sump asked what they meant by "team player", suggesting that perhaps they meant he was not an "ass-kisser," management's representatives said they didn't mean it that way, but rather that he was very vigilant in monitoring flight reschedules and said he was "nickel-and-diming us to death on overtime when he gets back after a trip."⁽⁵⁾ Sump replied that Burger was pressing these issues not only for himself, but other employees as well. At this meeting management never questioned the job performance of Burger nor the other two Aircraft Commanders, but only expressed concern with restraining overtime costs and controlling flight schedules.

The promotions, although announced in August 1992, were withheld and ultimately became effective on November 1, 1992. Thirty GM-14 positions were filled worldwide and all GM-13 Aircraft Commanders who applied for the position were selected, except for Burger, Hiraoka and Hollowell. On November 20, 1992 the three each received a memorandum from Atlanta FIFO Manager Wirt which stated that selections for the GM-14 position were made from among "reassignment/change to lower grade applicants", "noncompetitive repromotion candidates" and "promotion candidates." Burger's correspondence stated that he was not selected since other applicants were rated higher on the following criteria:

"demonstrating an understanding of the AVN mission and providing significant

contributions toward mission accomplishment", "commitment to providing a high

standard of service to our customers", and "planning and organizing."

Wirt's memorandum to Hollowell stated he was not selected since other candidates rated higher in:

"taking initiative to increase level of knowledge in area of expertise as well as work

related to, but outside, own technical area", "ability to translate the results of a

technical task into a written report", and "ability to orally transmit instructions for

accomplishing a technical task in a manner which can be easily understood by a wide

range of audiences."

The memorandum to Hiraoka stated that he was not selected because other candidates rated higher in the following:

"demonstrating the initiative to assume leadership and providing guidance when involved

in a group task", "ability to translate the results of a technical task into a written report",

and "ability to orally transmit instructions for accomplishing a technical task in a manner

which can be easily understood by a wide range of audiences."

The Alleged Discriminatees' Protected Activity

Leonard Burger has a long history of having engaged in protected activity at the Atlanta FIFO during times material to these proceedings. Burger has been the local Union representative at the Atlanta FIFO since 1982, and with the exception of the 1987-1988 period, Burger has been the only Union representative at the facility which employs 35 to 40 unit employees. In his capacity as the local Union representative, Burger has filed numerous grievances and unfair labor practice charges against Respondent and has participated in collective bargaining negotiations with Respondent. The record specifically reveals Burger filed three grievances in April 1992 alleging Respondent failed to pay him 0.3 hours overtime on three separate days for time he spent working on his daily flight log and again, on June 30, he filed a similar grievance concerning allegedly spending 0.3 hours on overtime for such work on May 5. Also, the record discloses Burger served two unfair labor practice charges on Respondent in June 1991 contending Respondent, by Summers,

violated the Statute by allegedly cancelling or withholding authorization to process one of Burger's travel vouchers and by Summers alleged refusing to bargain regarding a change in the time of the lunch period.

Burger has also filed grievances which alleged: scheduling incidents in October and November 1986 involving employees Hiraoka and Herndon; a January 1988 incident involving employees Herndon and Don Stokes; an incident concerning scheduling training in July 1989 involving employees Tyre and Hollowell; a shift change scheduling incident in November 1990 involving employees Hiraoka, Tyre and Williams; an incident in April 1992 involving employees Sauble and Cooper alleging Respondent failed to comply with the collective bargaining agreement when dispatching the employees; and incidents on

July 24 and July 30, 1992 concerning scheduling shift changes which involved employees Tyre and McCartha. The record does not disclose whether the named individuals were moving parties in these grievances or whether Burger filed the grievances as a Union representative policing adherence to the collective bargaining agreement nor does the record reveal the disposition of these grievances.

With regard to Lloyd Hiraoka, an unfair labor practice charge filed by Burger in May 1991 against the facility essentially alleged Respondent failed to abide by the parties' negotiated agreement. The charge involved a flight during which Hiraoka was Aircraft Commander and, the record reveals, higher management ultimately required Summers, then Acting Manager of the Atlanta FIFO, to provide a somewhat detailed explanation as to overtime usage at the facility. While testifying that he supported the Union, Hiraoka acknowledged he was not "vocal" about it.

John Hollowell was Union representative representing his "unit", apparently in 1988. He testified he had previously filed grievances for other people at some unspecified time. The record reveals that through settlement of a grievance filed on his behalf in April 1989 he received a retroactive temporary promotion of one pay grade for approximately seven weeks.

Respondent's Alleged Union Animus

John Hollowell credibly testified that in the summer of 1991 the possibility of upgrading GS-13 Aircraft Commanders was widely discussed at the Atlanta FIFO, including at a meeting between one of Respondent's higher level managers and Atlanta FIFO employees. Sometime shortly thereafter a number of unfair labor practice charges were filed involving Respondent and Acting Manager Summers, who was described as being "quite angry" remarked that if the upgraded Aircraft Commander position was let out for bid, Burger would not be one of the employees selected. Summers went on to say there were employees in the Procedures section who would be more than willing to fill the slots.

In September 1991 Burger had negotiated a procedure for the allocation of specific office space to employees by using seniority as the determinative factor. However, when time came for the designation of offices, Burger was informed by Summers that selections were being made by each employee matching a number out of a hat with a number on the office. Burger declined to participate in this procedure, indicating he would take whatever office was left over since this procedure was not part of the agreement he had negotiated and he would not be a party to it. Summers reacted by saying, "Hard times are ahead."

Sometime shortly before the decision to upgrade the Aircraft Commander's position was made in June 1992, talk was again commonplace around the Atlanta FIFO that the job was going to be upgraded. At this time Summers was overheard by an employee, now retired, to state to another employee, an acting supervisor, words to the effect that if Burger thought so much of the Union, he should not bid on the job.

Procedures employee Mike Lebhaft testified without contradiction that on a flight in September 1992, he witnessed what he considered to be a safety violation involving a "near miss" between two airplanes. Lebhaft informed Union representative Burger of the incident and the matter was subsequently brought to the attention of Flight Operations Supervisor Summers. Thereafter, Summers sharply criticized Lebhaft for not bringing the matter to his attention so he could investigate it and take disciplinary action. Summers indicated to Lebhaft that he would look into the matter but added that there may be other employees in the office that would not want to fly with him in the future. After the meeting Lebhaft received the impression he was being "black-balled" by other employees, including Summers, who, he surmised, felt he had informed on his associates. After a couple of weeks, probably in early November, Lebhaft complained to Summers that he didn't deserve the treatment he was receiving. Lebhaft testified:

". . . I told him how I felt, and he told me in order to get back into his graces,

directly not to associate with Lenny Burger because he is the Union figure; he is

using the Union to gain everything he can gain, and to use anybody within the

office to gain back his position, because he was kicked back as aircraft commander.

"And he said, 'He is using you as a scapegoat; he is using the system, and he is

using the Union to get back at -- get back his position.' And Mr. Summers was very,

very upset. As far as toward the Union, a lot of animosity -- you know what I mean,

a lot of bad feelings."

Airborne Electronics Technician William Schmidt credibly testified that a month or two after Aircraft Commanders were promoted to GM-14, he had a conversation with Summers. During this conversation Summers stated that Burger gave up his career in the FAA because of his Union involvement.

In November 1992 a petition to decertify the Union as the employees' exclusive representative was filed with the Washington, D.C. Regional Office of the Authority. The record reveals that employees' signatures supporting the decertification were solicited by correspondence which requested the signatures be sent to "S&A", with a postal box address in Emerson, Georgia. Testimony was received which established that "S&A" stands for "Summers and Associates" and that the postal box was rented by the wife of Respondent's Supervisor of Flight Operations and Scheduling Section, Nevin Summers. Although testifying in these proceedings, Summers did not address this matter.

Additional Findings, Discussion and Conclusions

The General Counsel contends that Respondent failed to select employees Burger, Hiraoka and Hollowell for the GM-14 position because of their protected activity and therefore discriminated against them in violation of section 7116(a)(1), (2) and (4) of the Statute. Respondent denies it failed to promote the three employees because of their protected activity and essentially argues that the candidates for promotion were properly ranked and selected; Hiraoka and Hollowell had no more protected activity than other employees who were promoted, and that counsel for the General Counsel has failed to establish a violation of the Statute by a preponderance of the evidence as required.

In Letterkenny Army Depot, 35 FLRA 113, 118-123, (1990) the Authority ruled that in a case involving alleged discrimination under section 7116(a)(2) of the Statute, the General Counsel must establish 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. Even if the General Counsel makes the required prima facie showing, an agency will not be found to have violated section 7116(a)(2) of the Statute if the agency can demonstrate, by a preponderance of the evidence, that: (1) there was a legitimate justification for its action; and (2) the same action would have been taken even in the absence of protected activity. Id.

In the case herein, the record reveals that Burger was a vigorous Union representative with an extensive history of filing both grievances and unfair labor practice charges against Respondent. Flight Operations Supervisor, and sometimes Atlanta FIFO Acting Manager, Summers was frequently called upon to respond to these filings. Both employees Hiraoka and Hollowell were, at times, the subjects of grievances filed by the Union.

In Burger's case it is beyond question, and I so find, that his Union activity was a constant source of irritation to Respondent, and Summers in particular. Summers Union animus is amply demonstrated particularly by the credited testimony of employees Burger, Hollowell, Lebaugh and Schmidt, above. More importantly however, Respondent's Union animus was acknowledged to the Union's National Representative Sump at the October 28, 1992 meeting, above, when management admitted that the "real reason" that Burger and the other two GS-13 Aircraft Commanders were not elevated to the GM-14 position, as were all other then existing GS-13 Aircraft Commanders in the organization, was because Burger, as the Union's representative, pressed for overtime pay and proper flight

scheduling for himself and other employees through filing grievances and unfair labor practice charges which Respondent viewed as being "nickel-and-dimed . . . to death." Indeed, the admission made to Sump by management as to the "real reason" why Burger did not receive the promotion vitiates any claim by Respondent that there was any legitimate justification for rating Burger in such a manner that he would not receive the promotion but rather, that he was deprived of the promotion for activity protected by the Statute.

I find the application of the promotion criteria when evaluating Burger was a veiled attempt to provide a legal justification to conceal otherwise illegal conduct. In the circumstances herein I conclude that Burger would have been promoted to the GM-14 position but for his engaging in activity protected by the Statute.

With regard to Hiraoka and Hollowell, Agency management at the October 28, 1992 meeting with National Representative Sump initially responded to Sump's inquiry concerning what the "real reason" was why the three Atlanta FIFO Aircraft Commanders were not to be promoted to the GM-14 position by stating that they were not "team players." While management's explication as to what was meant by the term "team player" centered on Burger's actions as Union representative, Respondent never gave any indication that Hiraoka and Hollowell were not also viewed in this same context, believing perhaps that they were supporters or close allies of Burger in his dogged pursuit of working conditions which would inure to the benefit of all Aircraft Commanders.⁽⁶⁾ For whatever reason, management included Hiraoka and Hollowell with Burger as not being "team players", and the only explanation given by management as to the term "team player" is one which comprises engaging in protected activity. Thus, as with Burger, I conclude that the rating of these individuals by application of the adopted criteria was merely a pretext and, but for their protected activity or management's belief that they engaged in the protected activity of assisting or supporting a Union representative's protected endeavors, Hiraoka and Hollowell would have been promoted to the GM-14 Aircraft Commander position.

Thus having found and concluded that the General Counsel has established a prima facie case of discriminatory discharge as alleged, and having found that Respondent has failed to demonstrate that there was legitimate justification for its action or that the same action would have been taken absent protected activity, I conclude Respondent's failure to promote Aircraft Commanders Burger, Hiraoka and Hollowell violated section 7116(a)(1), (2) and (4) of the Statute and I recommend the Authority issue the following:

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 the Department of Transportation, Federal Aviation Administration, Office of Aviation Systems Standards, Oklahoma City, Oklahoma, shall:

1. Cease and desist from:

(a) Discriminating against employees Leonard Burger, Lloyd Hiraoka and John Hollowell by failing to promote them to the GM-2181-14 Aircraft Commander position because they engaged in conduct protected by the Federal Service Labor-Management Relations Statute.

(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) Promote Leonard Burger, Lloyd Hiraoka and John Hollowell to the GM-2181-14 Aircraft Commander position effective November 1, 1992 and make them whole for any loss of pay or benefits suffered as a result of the failure to promote them when the position was originally established.

(b) Post at all facilities within the Office of Aviation Systems Standards, Atlanta, Georgia, copies of the attached Notice on forms to be furnished by the Director of the Office of Aviation Systems Standards, 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.⁽⁷⁾

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, in

writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 13, 1994

SALVATORE J.

ARRIGO

strative 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 employees Leonard Burger, Lloyd Hiraoka and John Hollowell by failing to promote them to the GM-2181-14 Aircraft Commander position because they engaged in conduct protected by the Federal Service Labor-Management Relations Statute.

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.

WE WILL promote Leonard Burger, Lloyd Hiraoka, and John Hollowell to the GM-2181-14 Aircraft Commander position effective November 1, 1992 and make them whole for any loss of pay or benefits suffered as a result of our failure to promote them when the position was originally established.

(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, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

1. Counsel for the General Counsel filed a Motion to Strike certain portions of Respondent's brief contending that the brief contains several assertions of facts for which there is no evidentiary support in the record and contains reference to documents which were marked for identification but never received in evidence. Respondent did not file a reply to the motion. I agree with counsel for the General Counsel's contentions and the Motion to Strike regarding the specific matters raised by counsel for the General Counsel is granted.
2. "AVN" stands for the Office of Aviation Systems Standards.
3. Eight other applicants were rated by other supervisors. Seven of the

applicants received "Superior" ratings in all KSAO categories and one applicant was rated "Superior" on items one and three and "Satisfactory" on items two and four.

4. Later another slot was authorized and employee Cooper was selected for a GM-14 position. Not all of the selectees were Aircraft Commanders prior to receiving the GM-14 position.

5. At a prior meeting that day, Burger and McIlwain had a heated discussion over grievances and during that session Burger was told by management's representative, "You're nickel-and-diming us to death on these grievances and U.L.P.s. You're always messing with the schedule; . . . we have to operate; the Mission comes first. . .".

6. Perhaps, as counsel for the General Counsel suggests, Hiraoka and Hollowell were lumped in with Burger to help mask discrimination directed at Burger. In any case, I would conclude that such conduct brought Hiraoka and Hollowell within the protection of the Statute.

7. In his opening statement at the hearing, counsel for the General Counsel urged that, as part of the remedy sought, the Notice be signed by the Administrator of the Federal Aviation Administration. That specific remedy was not mentioned in counsel's brief nor has any argument been made as to why signing the Notice by the chief administrative officer of the activity where the violation of the Statute occurred would not suffice. Accordingly, I find it appropriate to have the Notice signed by the Director at the administrative level of the violation.