AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1897 EGLIN AIR FORCE BASE, FLORIDA Respondent	
and JESSE W. JONES, AN INDIVIDUAL Charging Party	Case No. AT-CO-40973

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before 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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **JANUARY 2, 1996**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: November 30, 1995
Washington, DC

MEMORANDUM DATE: November 30, 1995

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1897
EGLIN AIR FORCE BASE, FLORIDA

Respondent

and Case No. AT-CO-40973

JESSE W. JONES, AN INDIVIDUAL

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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 filed by the parties.

Enclosures

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1897 EGLIN AIR FORCE BASE, FLORIDA Respondent	
and JESSE W. JONES, AN INDIVIDUAL Charging Party	Case No. AT-CO-40973

Stuart A. Kirsch, Esquire
For the Respondent

Jeanne Marie Corrado, Esquire
Christopher Feldenzer, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. [1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent, in effect, told a non-member it would not process his grievance beyond the first

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1
For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (b)(1) will be referred to, simply, as, "16(b)(1)".

step unless he joined the Union in violation of § 16(b)(1) of the Statute.[2]

This case was initiated by a charge filed on September 9, 1994 (G.C. Exh. 1(a)), the Complaint and Notice of Hearing issued on March 15, 1995 (G.C. Exh. 1(b), and set the hearing for June 6, 1995, in Fort Walton Beach, Florida. By telephone discussion, confirmed by letter dated May 16, 1995, the hearing was rescheduled for August 9, 1995, in Pensacola, Florida; and by Order dated August 2, 1995, (G.C. Exh. 1(e)); this case was transferred to the Washington Region of the Authority. Accordingly, a hearing was duly held on August 9, 1995, in Pensacola, Florida, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which Respondent exercised. At the conclusion of the hearing, September 11, 1995, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on motion of the General Counsel, to which the other parties did not object, for good cause shown, to September 29, 1995. Respondent and General Counsel timely filed, or mailed, a brief, received on, or before, October 2, 1995, which have been carefully considered. On the basis of the entire record,[3] including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, Local 1897 (hereinafter referred to as, "Respondent" or "Union") is the certified exclusive representative of an

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[2] At the hearing, General Counsel moved to amend the Complaint by deleting paragraph 14 of the Complaint. There being no objection, General Counsel's motion was granted and paragraph 14 was deleted (Tr. 10).

[3] In the letter of transmittal of her brief, Counsel for the General Counsel stated, in part, that:

> ". . . Due to the number of missing and mismatched pages in the transcript that I received, the court reporting service provided . . . a new copy of the transcript. . . ."

The copy of the transcript received by this Office, marked "Original", was complete and no mismatched pages have been detected.

appropriate unit of employees of Eglin Air Force Base, Florida (hereinafter referred to as, "Eglin AFB").

2. The Union represented Ms. Mary Kelley in a grievance against Eglin AFB which concerned allegations that Eglin AFB had condoned a work environment of open hostility, degradation and harassment of Ms. Kelley, primarily instigated by her co-worker, Mr. Jesse W. Jones. In resolution of the grievance, Eglin AFB reassigned Mr. Jones to another section, i.e., from Duke Field, an auxiliary field, to Eglin, the two being about 15 miles apart (Tr. 18). Mr. Jones was notified of his reassignment on June 7, 1994 (Tr. 20, 21), and his reassignment was effective July 11, 1994 (Tr. 17), a little over a month later. In his Step 2 Grievance Decision, Lieutenant Colonel Randie A. Strom stated, in part,

> "13. Because of the impact to the morale of the entire Duke Filed (sic) section as a result of the deleterious relationship between yourself [Kelley] and Mr. Jones, I have decided to management reassign Mr. Jones to another section. The poor relationship Mr. Jones has with other section members as well was an important consideration in my decision. It is important to understand that I have decided to take this action primarily because I believe it to be in the best interest of the entire Duke Field section, and does not imply sole responsibility on his part for the situation.
>
> . . . ." (Union Exh. 4, p. 4, par. 13).

3. Ms. Kelley was represented by Ms. Debbie S. Milau, President of the Union, and Mr. Donald H. Turner, steward[4] (Tr. 19-20, 78, 117, 162), as Mr. Jones knew (Tr. 20, 78). Indeed, Mr. Turner stated that Mr. Jones wouldn't even speak with him after the Kelley grievance was filed (Tr. 117, 118). Ms. Milau stated that before she filed the Kelley grievance she called Mr. Jones three times and each time left a message for him to call her but he did not return her calls. (Tr. 161, 162).

4. Having been given a copy of the Step 2 grievance decision on June 7, 1994 (Tr. 20), Mr. Jones met with Colonel Strom and Chief Master Sergeant Quarles on June 8 (Tr. 21). Following the meeting, Mr. Jones asked Sgt.

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[4] Mr. Turner is now Chief Steward (Tr. 114).

Quarles for a copy of the charges[5] [grievance] but did not receive it at that time (Tr. 22). The following day, June 9, he went to Mr. Turner and asked him for a copy of the grievance and Mr. Jones said that Mr. Turner told him that because the grievance was filed against management, he could not provide a copy without management's authorization. Mr. Turner stated that Mr. Jones didn't ask for a copy of the grievance but, rather asked for the employee statements management had taken and he told Mr. Jones he did not have them (Tr. 123).

5. On June 10, 1994, Mr. Jones went to see Mr. Douglas A. Decker, then Second Vice President and steward of the Union (Tr. 23, 126)[6] and asked him what he, Jones, could do about the Kelley grievance and Mr. Decker told him he, Decker, could not do anything without knowing the charges Ms. Kelley had filed; that when Mr. Jones said he had not been able to get the charges, Mr. Decker told Mr. Jones he could get the information through the Freedom of Information Act (Tr. 24-25).

6. Mr. Jones made a FOIA request on June 13, 1994 (G.C. Exh. 3), and the information requested was furnished in part on June 23, 1994, and the balance was furnished on June 28, 1994 (G.C. Exh. 3, Attachments).

7. Mr. Jones was on leave from June 29 until July 11, 1994, when he began working at Eglin (Tr. 29). At about 4:00 p.m. on July 11, Mr. Jones met with Mr. Decker at the sheet metal shop at Duke Field and told Mr. Decker he had got the information from his FOIA request and, ". . . wanted to know what can I do about it." Although some of the references were a bit obtuse, clearly Mr. Jones meant his reassignment, which he wanted set aside so he could get back to Duke Field (Tr. 127, 166). Mr. Jones said that he asked Mr. Decker if it would be a problem that Ms. Milau had handled the Kelley grievance (Tr. 32) and that Mr. Decker had said, ". . . no, it depends on the merits of the case. And if the merits prove true, that Debbie Milau would not have nothing to say about whether he would file a

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As General Counsel noted, ". . . Jones interchanged the terms 'charges' and 'grievance' several times when referring to the grievance filed by Mary Kelley." (General Counsel's Brief, p. 2, n.1).

6
Mr. Decker retired from Civil Service employment on April 26, 1995 (Tr. 126); is no longer an officer of the Union; but works at Hurlburt Field, a part of Eglin, in a military capacity as a member of the Air Force Reserve (Tr. 125).

grievance." (Tr. 32). Mr. Decker stated that he went through the information Mr. Jones gave him and, ". . . I told him I would have to check with the president of the Union, you know, on this here to go through this because I wasn't quite sure." (Tr. 130). ". . . I was not familiar with the case until, well, he brought the stuff to me. And I was at a loss because, see, this was a result of another grievance. And I didn't really exactly know what to do. And that's why I said I had to talk to Ms. Milau . . . to find out where we could go, because I wasn't sure." (Tr. 132). Mr. Decker stated that he put the information he received from Mr. Jones in an envelope, sealed it, and gave it to his wife, who was a secretary in the Union office, to deliver to Ms. Milau the next morning (Tr. 130, 143, 145) and that Mr. Jones never returned to see him (Tr. 139).

There is no dispute that Mr. Decker at the July 11 meeting asked Mr. Jones if he was a member of the Union and gave Mr. Jones a dues withholding form, SF-1187. Since this is the heart of the case, their respective versions are set forth in detail.

Mr. Jones testified:

> ". . . whenever he told me that Debbie really could not stop him, and I kind of felt like that, you know, he was going to go ahead with it, and he asked, he said, are you a member of the Union.
>
> "I said, no, I was not.
>
> "Q What, if anything, did Mr. Decker say to you next?
>
> "A He said, well, it would be better if you joined the Union because by law I'd only be required to carry it to step one.
>
> "Q Did you respond to that statement?
>
> "A Yes, I did.
>
> "Q And what did you say?
>
> "A I said, I'll be joining the Union if he -- you know, if it would help him.
>
> . . .

"A Mr. Decker then turned around and walked over to his locker. And that's where he pulled out this payroll deduction form, and he brought it back over to me.

"Q Okay. Did you complete the payroll deduction form?

"A Yes, ma'am. I completed the payroll deduction. And at that time his payroll form had 11.50, and he scratched it out and put $12 for payroll deduction dues. And I signed -- I initialed that part of it.

"Q Okay. Did you return the payroll deduction form to Mr. Decker at that meeting?

"A Yes, ma'am, I did.

"Q Did Mr. Decker tell you that the Union would assist you with filing your grievance?

. . .

"THE WITNESS: He did not come right out and say that the Union would represent him (sic). He said that he would take the papers and read them, and depending on the merits of the case as to whether he would file a grievance or not.

"And he turned around and told me, you better not be lying to me.

. . .

"Q And did you respond to that statement?

"A Yes, ma'am. . . . I said, Doug, I'm not lying to you on any of this. If you catch me in one lie, then you can drop the whole case." (Tr. 32-34).

. . .

"Q Did you go to see Mr. Decker again --

"A Yes.

"Q -- after the July 11th meeting?

"A Yes, ma'am. On July the 12th I returned.

. . .

"A Again, I met him at the sheet metal shop at 919th, Duke Field.

. . .

"A . . . Again, it was approximately 3:45 or 3:15.

. . .

"Q Did you ask him if he had gone through the papers?

"A Yes, ma'am, I did.

"A His response was that, no, he did not get to go through the papers because he was -- had to cut some trees up that had blowed (sic) down during that storm . . .

. . .

"A . . . He told me it would kind of put him on the spot because him and Debbie Milau were friends. And besides, he had talked to his wife about the harassment charges and she didn't believe a thing I had said and felt that I was lying about it all.

. . .

"A I told him -- I told him that I was not lying about any of it. . .

. . .

"A The conversation, basically, did not go much further after that.

. . .

"A And he said he did -- He said that he would read the papers that night. . .

"Q Did you attempt to see Mr. Decker again after the July 12th meeting?

"A Yes, ma'am. . .

. . .

"A On July the 13th, 1994.

. . .

"A Again, at 919th sheet metal shop, Duke Field.

. . .

"A I asked Mr. Decker had he read the papers yet. And he said, no, not yet, that he'd still been busy. . .

. . .

"Q What -- Did you pursue the matter any more with Mr. Decker?

"A No, ma'am. I felt that it was no need to pursue it any further because he had done said it was up to Debbie Milau . . . whether it was filed or not." (Tr. 35-39).

. . .

"A After his last statement of saying that it would be up to Debbie Milau whether he filed a grievance or not, I felt that I was wasting my time. And I did not say to Mr. Doug Decker anything. I just had made up my mind that I was going to go ahead and try to set a meeting with Debbie." (Tr. 83-84).

Mr. Decker testified as follows:

"Q Okay. In either the first or second meeting was there anything -- was Mr. Jones' membership discussed at all?

"A Well, I gave him, like I do with most people, I gave him an 1187 and said, you know, it's your option to join or not to join.

"Q Do you remember if that was at the first or the second meeting?

"A No, I don't really remember which meeting it was at.

"Q Okay. Okay. And other than telling him that it was his option to join or not to join, did you tell him anything else when you gave him the -- regarding the membership?

"A Not that I can remember.

. . .

"Q Did you ever tell Mr. Jones that it would be better if he joined the Union because by law you would only have to carry it or the grievance to step one?

"A No, sir. I don't believe I ever said that.

"Q Did you ever say anything like that?

"A No. I think what I told him is there are certain things that we can carry and there are certain things that we can't carry, because, you know, I don't have to deal with, you know, MSPB's or that type of stuff.

"I mean, I have to find out what that grievance is or whether it has merit that would go for a grievance.

"Q Did you indicate to him that you had to review the case based upon its merits?

"A I won't say that I -- That was in my mind.

"Q Okay.

"A Because, see, I was not familiar with the case until, well, he brought the stuff to me. And I was at a loss because, see, this was a result of another grievance. And I didn't really exactly know what to do. And that's why I said I had to talk to Ms. Milau, the president of the Union, to find out where we could go, because I wasn't sure.

"Q Okay. Did he -- What did he do with the 1187 that you gave him?

“A I don't know, sir. I never saw it after I had given it to him. (Tr. 130-132).

. . .

“Q . . .

“That second meeting you talked about with Mr. Jones, how did you leave that meeting? What was -- How did you understand that meeting was left as to who was to get back to whom?

“A Mr. Jones was supposed to have gotten back with me and I -- because I told him that there were some -- a few other things I needed after that paperwork. I don't exactly recall what it was.

“And I told him that I would be getting in contact with Ms. Milau to go over the case with her on that. And that's the last time I ever saw him. He never come back to me for a third time or a fourth time or any time.

“Q Did you ever tell Mr. Jones in either of those meetings that it was up to you totally to file a grievance and Debbie could not stop you from filing the grievance?

“A No, sir. I have never said that.

“Q Have you ever made a statement such as to any non-member or member that it would be better to be a member --

“A No, sir.

“Q -- because by law either you or the Union would only have to carry it to step one.

“A No, sir. I've never made that statement.

“Q Did Mr. Jones ever tell you if you catch him on one lie, you can drop the whole thing?

“A No, sir. (Tr. 139-140).

. . .

"A He did not fill it out right there then. Like I say, I don't know whether it was the first one or second one. But I never seen the 1187 after that. . ." (Tr. 146).

8. Mr. Jones first testified that he went to the Union office at about 8:00 a.m. on July 14; that he spoke to Mr. Mike Bowers, the recruiter (Tr. 40); that he told Mr. Bowers he wanted to set up a meeting with Ms. Milau (Tr. 40-41); that Mr. Bowers asked if he were a member and Mr. Jones stated that when, ". . . I said I had joined the early part of that week . . . he [Bowers] said, well, let me get you to fill out another one here . . . and I'll just cancel that one there out." (Tr. 41). Mr. Jones did sign a form 1187 on July 14, 1994 (Tr. 44), which Mr. Bowers signed on July 14, 1994, and transmitted to Eglin AFB on July 14, 1994 (G.C. Exh. 2, Attachments). Mr. Jones' dues withholding became effective July 24, 1994 (G.C. Exh. 2); and Mr. Jones is still a dues paying member of the Union (Tr. 45).

9. Mr. Jones stated that he talked to Ms. Ann Decker, presumably on July 14, and an appointment was set for 3:30 p.m., July 14, for him to meet with Ms. Milau and that he met with Ms. Milau on July 14 for about an hour (Tr. 94). He stated that he did not ask Ms. Milau to do anything (Tr. 97); that he went to ask, ". . . what went down, why did it go down the way it did, and told her why was I not offered an opportunity to give my side of the story and why was I not present at the meetings." (Tr. 97). Mr. Jones stated that he had never asked anyone in the Union to allow him to be present at the step one or two of the Kelley grievance meetings (Tr. 99-100) and Ms. Milau told him, ". . . she had told Management that I should be involved in on the meetings and Management denied it." (Tr. 101). Mr. Jones stated that he told his supervisor, before he gave a statement to management, ". . . when would I have a chance to tell my side" (Tr. 98) and the supervisor had told him, ". . . just hang tight and let's see what step two -- what Colonel Strom decides." (Tr. 99).

Then Mr. Jones stated he did not meet with Ms. Milau on July 14 (Tr. 109); that when he arrived for the 3:30 appointment he was told she (Ms. Milau) could not make it from Pensacola because it was raining (Tr. 109), that he did not meet with Ms. Milau until July 25, 1994 (Tr. 110).

10. Mr. Jones stated that there was no mention of his membership status in his meeting with Ms. Milau (Tr. 103). Moreover, he was emphatic that he did not ask Ms. Milau to

file a grievance for him (Tr. 97, 103); but he did say he wanted to, ". . . see if I could get her to do anything for me through Management." (Tr. 103).

Ms. Milau described the meeting with Mr. Jones as follows:

> "A He was very nice. He was very polite, initially. Told me he was upset that he had been transferred to Eglin, that it was an inconvenience for him, and wanted to know what he could do about it.
>
> "And I explained to him what -- how the situation arrived at where it was, because of the numerous statements against him from other employees and his managers, and that the transfer was a Management decision. It was not a Union decision.
>
> "I never asked that he be transferred anywhere. I just asked that him and Mary be separated. That was the remedy requested in the grievance, to separate the two of them.
>
> "He became very irate, very abusive, very vulgar, very threatening, and left." (Tr. 164).

11. Ms. Kelley's grievance was appealed to Step three; there was a meeting with Colonel Alan C. Ray, Ms. Kelley and Mr. Turner on June 28, 1994; and Colonel Ray's decision, making Mr. Jones' management reassignment permanent, issued on July 1, 1994 (Union Exh. 6).

Conclusions

Inasmuch as the Union does not assert that the allegations of the Complaint were not "covered by" the charge[7], I express no opinion as to whether, had the issue been

7 Notwithstanding that in its Brief, the Union noted that,

> ". . . there was not a single mention of Douglas Decker's name, or a single allegation of union action based on his not being a member, the Union even inquiring about his membership, or making reference to any action said or done by the union motivated by membership considerations. The allegation in the complaint was fomented in the Regional Director's apparent investigation . . . ." (Union's Brief, p. 6).

asserted by the Union, the allegations of the Complaint were, as General Counsel argues (General Counsel's Brief, pp. 11-14), "closely related" to the charge. Rather, plainly the allegations of the charge initiated an investigation and the allegation of the Complaint, without objection, was fully litigated.

I quite agree with the parties that resolution of the conflict in testimony of Messrs. Jones and Decker is pivotal (General Counsel's Brief, p. 5; Union's Brief, p. 6). General Counsel attacked the credibility of Mr. Decker and, conversely, lauded the testimony of Mr. Jones (General Counsel's Brief, pp. 6-9), while the Union attacked the credibility of Mr. Jones and lauded the testimony of Mr. Decker (Union's Brief, pp. 6-17). There is some basis for the position of each but General Counsel is not correct that Mr. Decker ". . . was able to recall only two of his meetings with Jones . . . ." (General Counsel's Brief, p. 7). To the contrary, Mr. Decker testified without qualification that he met with Mr. Jones twice. ". . . He never came back to me for a third time or a fourth time or any time." (Tr. 139). I can well understand Mr. Jones' confusion on the witness stand when he first stated that he met with Ms. Milau on July 14 (Tr. 94) but later stating it was not until July 25, 1994 (Tr. 110); but Mr. Jones' flat, unequivocal declaration that he had never filed a grievance regarding his reassignment (Tr. 75, 76), which was directly contrary to the subject of his August 9, 1994, letter (Tr. 75, 76), is difficult to rationalize. In truth, without undertaking a statement by statement analysis of the testimony of each, I did not find the testimony either of Mr. Jones or of Mr. Decker wholly satisfactory and will carefully examine the record before crediting the testimony of either concerning any conflict in their testimony.

As noted previously there is no dispute whatever that, at their July 11, 1994, meeting, Mr. Decker asked Mr. Jones if he were a member of the Union and gave Mr. Jones a dues withholding form, SF-1187. Mr. Jones testified that when he said he was not a member, Mr. Decker, ". . . said, well, it would be better if you joined the Union . . . ." (Tr. 32). I credit Mr. Jones' testimony that Mr. Decker said it would be better if he joined the Union for the reason that Mr. Decker did not deny that he said it would be better if he joined and, more important, this was implicit in Mr. Decker's testimony (Tr. 132). It is far less certain as to why Mr. Decker told Mr. Jones it would be better if he joined the Union. Mr. Jones stated that Mr. Decker said, ". . . because by law I'd only be required to carry it to step one." (Tr. 32). Of course, if said, such statement would blatantly countervail the duty of an exclusive

representative as the Authority has stated, ". . . that a union acts as the exclusive representa-tive of all unit employees, members and non-members alike, _with regard to all stages of grievance processing_ . . . _including representation at the arbitration stage_ . . . ." _National Treasury Employees Union_, 38 FLRA 615, 623 (1990) (Emphasis supplied). Mr. Decker stated that he told Mr. Jones because, ". . . there are certain things that we can carry and there are certain things that we can't carry, because, you know, I don't have to deal with, you know, MSPB's or that type of stuff." (Tr. 132). I agree with General Counsel that Mr. Decker's assertion that he explained to Mr. Jones that the union was not required to represent a non-member before the MSPB, ". . . does not logically follow the previous conversa-tion" (General Counsel's Brief, p. 6). This certainly detracts from the credibility of Mr. Decker's response. To bolster his version, Mr. Jones testified that he filled out the 1187, and, ". . . at that time his [Decker's] payroll form had 11.50, and he scratched it out and put $12 for payroll deduction dues. And I signed -- I initialed that part of it." (Tr. 33). Further, Mr. Jones said he returned the form to Mr. Decker (Tr. 33). Mr. Decker testified that he never saw the 1187 after he handed it to Mr. Jones (Tr. 132, 146). The 1187 that Mr. Jones signed on July 14, 1994, was introduced as an exhibit (G.C. Exh. 2, Attachment); the "11.50" is also crossed out and "12.00" has been written in; but this change is not initialed. The troubling part to me is that this was not mentioned by Mr. Jones and General Counsel studiously avoided any reference to the change on this document (Tr. 41-42). While some doubt is thus cast on Mr. Jones' testimony that he returned the 1187 to Mr. Decker on July 11, Mr. Bowers was not called as a witness so that Mr. Jones' testimony that, when Mr. Bowers asked if he were a member of the Union, ". . . I said I had joined the early part of that week . . . he said, well, let me get you to fill out another one here that . . . I told him I joined with Doug Decker. He said, let me get you to fill out another one here and I'll just cancel that one there out." (Tr. 41), is wholly uncontradicted, is credible and is credited. Inasmuch as Mr. Decker's testimony that Mr. Jones did not return a signed 1187 to him on July 11 was not correct, his testimony that he told Mr. Jones he should join the Union because, ". . . I don't have to deal with, you know, MSPB's or that type of stuff" (Tr. 132) does not logically follow the previous conversation and is not convincing. Accordingly, I credit Mr. Jones' testimony that Mr. Decker told him, ". . . it would be better if you joined the Union because by law I'd only be required to carry it to step one." (Tr. 32).

I am aware, as the Union points out (Union's Brief, pp. 17-18), that Judge Fenton, in American Federation of Government Employees, Local 987, AFL-CIO, 4 FLRA 160 (1980), a case under Executive Order 11491, held, and in the absence of exceptions the Authority adopted his conclusions, in part, as follows:

> "The matter of Maddox's statement is more troublesome. If he in fact referred to Leggette's need for help when he solicited his membership, the statement is clearly susceptible of the interpretation that such assistance would be forthcoming only if the membership application was executed. Such a condition would, of course, be unlawful. Maddox's remark, however, was made in circumstances where Leggette did not appear to be seeking help, unless Union 'sponsorship' of his grievance, as defined above, is considered help and an understanding of that is attributed to Maddox. On this record it would be farfetched to do so. . .
>
> "The duty of fair representation requires that a union represent all employees in a unit for which it is the exclusively recognized representative without hostility or discrimination, and to exercise its discretion in such matters honestly and in good faith. (footnote omitted) Thus, it must consider and process grievances of members and nonmembers alike, drawing no distinction on that or any unfair and invidious ground. I cannot read that obligation as foreclosing an appeal to the nonmember to join and avoid the free ride. The union official who utters such a statement of course invites suspicion, and if other circumstances fortify that suspicion, he risks an unfair labor practice finding. . . . A labor organization exists to proseletize (sic), and has every right to persuade nonmembers that its duty to represent them creates a corresponding duty on their part to support it. Success in this effort is indispensable to its capacity to function effectively as a representative of all employees. Absent other, rather convincing evidence of hostility to nonmembers, I conclude that such an appeal to Leggette is not evidence of an unwillingness to discharge its obligation. . . ." (id. at 168-169)

More recently, the Authority has stated,

> "The standard for determining whether a union's statement violates section 7116(b)(1) of the Statute is an objective one. The question is whether, under the circumstances, employees could reasonably have drawn a coercive inference from the statement. . . . As in cases involving a violation of section 7116(a)(1) of the Statute, the standard for a section 7116(b)(1) violation is not based on the subjective perceptions of the employee or on the intent of the speaker . . .
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> "Where a union is acting as the employees' exclusive representative, the Statute requires that the union's activities be undertaken without regard to union membership. . . ." American Federation of Government Employees, Local 987, AFL-CIO, Warner Robins, Georgia, 35 FLRA 720, 724 (1990) (Emphasis supplied).

The issue here is whether, as the Authority stated, ". . . employees could reasonably have drawn a coercive inference from . . ." Mr. Decker's statement to Mr. Jones. I conclude that employees would have drawn a coercive inference from Mr. Decker's statement. Plainly, Mr. Jones came to Mr. Decker seeking help. Initially, in June, Mr. Decker, without reference to Union membership, gave Mr. Jones advice and guidance as to how to obtain information from the activity. When Mr. Jones returned in July with the information and, again, sought help in filing a grievance, Mr. Decker asked if he were a Union member and when Mr. Jones replied that he was not, Mr. Decker told him, as I have found, that it would be better if he joined the Union, ". . . because by law I'd only be required to carry it to step one." (Tr. 32, 79). Mr. Decker's egregious misrepresentation of the Union's obligation under the law concerning the processing of grievances was a strong and coercive statement that clearly implied that unless he was a member the Union would handle his grievance only at step one. I am well aware that Mr. Decker also told Mr. Jones that whether he could file a grievance, ". . . depends on the merits of the case. . . ." (Tr. 32); but this did not alter in any manner the coercive nature of Mr. Decker's statement to Mr. Jones that it would be better if he joined the Union, ". . . because by law I'd only be required to carry it to step one." An employee would reasonably infer that the most meritorious grievance of a non-member would be "carried" by the Union only to step one. Accordingly, the Union violated § 16(b)(1) of the Statute by Mr. Decker's statement to Mr. Jones.

General Counsel's request that the remedial order, ". . . further directs that the charging party be given the opportunity to resign from the Union and be reimbursed for dues paid by the charging party from July 14, 1994, to the present. . . .", is denied. Mr. Decker's statement to Mr. Jones may have induced his filling out the 1187 on July 11; but Mr. Jones knew on July 14 when he went to the Union office and spoke to Mr. Bowers that his earlier 1187 had not been processed. Mr. Jones stated that Mr. Bowers said, ". . . let me get you to fill out another one here [a 1187] . . . and I'll just cancel that one there out." (Tr. 41). Mr. Jones was well aware that Mr. Bowers was the Union recruiter because that was the way he introduced himself to Mr. Jones (Tr. 40). Although Mr. Bowers asked if he were a Union member, when Mr. Jones said, ". . . I had joined the early part of that week" (Tr. 41), Mr. Bowers simply said, ". . . let me get you to fill out another one here and I'll just cancel that one there out." Nothing in the record shows any coercion in his statement, all of which indicates that Mr. Jones could have terminated his earlier application but he did not. Rather, he again filled out an application [1187]. By the time he met with Ms. Milau on July 25, 1994, he conceded that he did not ask her to do anything (Tr. 97), but, rather, wanted to know, ". . . why did it go down the way it did. . . ." (Tr. 97). When Ms. Milau told him that because of numerous employee statements against him, management had decided to transfer him; that the Union had not asked that he be transferred, Mr. Jones expressed his ire and left (Tr. 164). Significantly, Mr. Jones did not then, or at any time thereafter, seek to terminate his Union membership.

Although Mr. Jones stated that he did not know until about August, 1995, that he had, ". . . a right to get out of the Union after one year of joining. . . ." (Tr. 80), Mr. Jones did not say that he had any doubt he could terminate his Union membership. But he never asked anyone about getting out of the Union (Tr. 82-83). Consequently, the record shows that Mr. Jones' continued membership was voluntary. Moreover, as the Union states, ". . . Mr. Jones has received a plethora of other tangible benefits provided by AFGE National by virtue of his membership. . . ." (Union's Brief, p. 20), including: life insurance; AFGE MasterCard privilege; travel program; legal assistance, prescription program; dental insurance; <u>etc.</u> (Tr. 172-173). Under the circumstances, neither the immediate termination of membership nor reimbursement for dues paid by Mr. Jones is warranted.

Having found that the Union violated § 16(b)(1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to s§ 2423.29 of the Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that American Federation of Government Employees, Local 1897, Eglin Air Force Base, Florida, shall:

1. Cease and desist from:

(a) Soliciting membership by any employee seeking assistance in filing a contractual grievance.

(b) Making any statement to Mr. Jesse W. Jones, or any other bargaining unit employee, which states directly, or by reasonable inference, that grievances of non-members of the Union will be processed only to the first step, or in any other manner, that grievances of non-members of the Union will be handled, or processed, in a disparate manner from grievances of Union members.

(c) Interfering with, restraining, or coercing bargaining unit employees in the exercise of their right to join, or to refrain from joining, American Federation of Government Employees, Local 1897, or any other labor organization, freely and without fear of penalty or reprisal.

(d) In any like or related manner interfering with, restraining, or coercing bargaining unit employees in their exercise of the rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its local business office, at its normal meeting places, and at all other places where notices to members and to employees of Eglin Air Force Base, Florida, including sub-bases of Eglin Air Force Base such as Duke Field, are customarily posted, 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 President of the American Federation of Government Employees, AFL-CIO, Local 1897, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and places where notices to members and other bargaining unit employees

are customarily posted. Reasonable steps shall be taken by the American Federation of Government Employees, Local 1897, to ensure that such notices are not altered, defaced, or covered by any other material.

(b) Pursuant to § 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, of the Washington Region, Federal Labor Relations Authority, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: November 30, 1995
Washington, DC

NOTICE TO ALL MEMBERS AND 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 MEMBERS AND EMPLOYEES THAT:

WE WILL NOT solicit membership by any employee seeking assistance in filing a contractual grievance.

WE WILL NOT make any statement to Mr. Jesse W. Jones, or any other bargaining unit employee, which states directly, or by reasonable inference, that grievances of non-members of the Union will be processed only to the first step, or, in any other manner, that grievances of non-members of the Union will be handled or processed, in a disparate manner from grievances of Union members.

WE WILL NOT interfere with, restrain, or coerce bargaining unit employees in the exercise of their right to join, or to refrain from joining, American Federation of Government Employees, Local 1897, or any other labor organization, freely and without fear of penalty or reprisal.

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

(American Federation of
Government
Employees, Local 1897)

Date: By:
(Signature) (President)

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, Washington Region, whose address is: 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, and whose telephone number is: (202) 653-8500.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CO-40973, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Stuart A. Kirsch, Esquire
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  Employees, Local 1897
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Jeanne Marie Corrado, Esquire
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Federal Labor Relations Authority
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Mr. Jesse W. Jones
906 N. Lloyd Street
Crestview, FL 32536-2431

REGULAR MAIL:

National President
American Federation of Government
  Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: November 30, 1995
Washington, DC