

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

U.S. DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, JAMAICA PLAIN, MASSACHUSETTS Respondent	
and FRATERNAL ORDER OF POLICE Charging Party	Case No. BN-CA-30274

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been presented to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision on Remand, 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 APRIL 8, 1996, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: March 7, 1996
Washington, DC

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

MEMORANDUM

DATE: March 7, 1996

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF VETERANS
AFFAIRS, MEDICAL CENTER,
JAMAICA PLAIN, MASSACHUSETTS

Respondent

CA-30274

and

Case No. BN-

FRATERNAL ORDER OF POLICE

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 on Remand, the service sheet, and the transmittal form sent to the parties. Also enclosed is the Record sent to this office on February 29, 1996.

Enclosures

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

U.S. DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, JAMAICA PLAIN, MASSACHUSETTS Respondent	
and FRATERNAL ORDER OF POLICE Charging Party	Case No. BN-CA-30274

DECISION ON REMAND

This unfair labor practice case is before the undersigned pursuant to an Order Remanding Case issued by the Federal Labor Relations Authority (Authority) on February 28, 1996. The Authority remanded the complaint to the Chief Administrative Law Judge for assignment to another Judge with instructions to expeditiously resolve the complaint. This decision is issued consistent with the Authority's Order and the assignment of the case to the undersigned by the Chief Administrative Law Judge.

Statement of the Case

The unfair labor practice complaint issued by the General Counsel of the Authority in this case alleges that the U.S. Department of Veterans Affairs Medical Center, Jamaica Plain, Massachusetts (Respondent) violated section 7116(a) (1) and (2) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.* (the Statute), by taking disciplinary action against an employee for engaging in activity that is protected under section 7102 of the Statute. In his initial decision, the Judge originally assigned to this case concluded that the Respondent did not violate the Statute, as alleged. He found that a letter of complaint written by Michael Giannetti, one of Respondent's non-supervisory police officers and President of the Greater Boston Lodge, Fraternal Order of Police (FOP), on FOP stationery, to the Respondent's acting Chief of police, was not protected activity because the letter's contents contained threats of reprisal constituting flagrant misconduct. Accordingly, the Judge concluded that the

Respondent did not commit an unfair labor practice by suspending Giannetti for 14 calendar days over what it viewed as his insubordinate and threatening remarks. In so concluding, the Judge assumed but did not decide that FOP is a "labor organization" within the meaning of section 7103(a) (4) of the Statute.

Based upon exceptions filed by the General Counsel, the Authority remanded the case to the Judge for further findings regarding whether the Fraternal Order of Police, Greater Boston Lodge is a "labor organization" under the definition set forth in section 7103(a) (4) of the Statute. *U.S. Department of Veterans Affairs, Medical Center, Jamaica Plain, Massachusetts*, 50 FLRA 583 (1995). In remanding the case, the Authority found that the statements contained in Giannetti's letter were not of such an outrageous and insubordinate nature as to constitute flagrant misconduct, and that the letter "would constitute protected activity if Giannetti wrote it to assist a labor organization within the meaning of section 7102 of the Statute, and discipline taken against Giannetti for writing the letter would violate section 7116(a) (1) and (2) of the Statute." *Id.* at 588. In the Authority's view, there-fore, whether FOP meets the definition of "labor organization" in section 7103(a) had become "critical" to determining if a violation of the Statute occurred. *Id.* The Authority thus concluded that "[t]he Judge should make a determination on this question and issue a recommended decision and order resolving the complaint in accordance with his determination and our conclusions herein." *Id.* at 589.

On remand, following a hearing and the filing of briefs, the Judge issued his decision on remand finding that the Fraternal Order of Police, Greater Boston Lodge is a "labor organization" as defined by section 7103(a) (4) of the Statute. However, he further found that because FOP was not the exclusive representative of Respondent's employees, Giannetti's letter of complaint to management did not constitute protected activity under the Statute. Accordingly, he concluded that the Respondent did not violate section 7116(a) (1) and (2) of the Statute by disciplining Giannetti for engaging in unprotected conduct on behalf of FOP.

The General Counsel then filed exceptions to the Judge's decision on remand, contending, among other things, that having found FOP to be a "labor organization" as defined in section 7103(a) (4) of the Statute, the Judge should have held, consistent with the Authority's conclusions in 50 FLRA 583, that the Respondent's suspension of Giannetti for engaging in protected activity on behalf of

FOP violated section 7116(a)(1) and (2) of the Statute. The Authority agreed, and again remanded the case for action consistent with its decision. *U.S. Department of Veterans Affairs, Medical Center, Jamaica Plain, Massachusetts*, 51 FLRA No. 73 (Feb. 28, 1996).

Conclusions of Law

As this case comes before the undersigned, several critical issues no longer require resolution. Thus, the Authority already has determined that Giannetti's letter of complaint to management was protected activity rather than unprotected flagrant misconduct. Further, the Authority has concluded that, if Giannetti was assisting a "labor organization" as defined in section 7103(a)(4) of the Statute, his suspension by the Respondent for engaging in such protected activity would constitute a violation of section 7116(a)(1) and (2) of the Statute. Finally, the undersigned is bound by the Judge's finding on remand--to which no exceptions were filed with the Authority--that the Fraternal Order of Police, Greater Boston Lodge is a labor organization as defined in the Statute. Accordingly, the only legal conclusion possible based on these findings and conclusions is that the Respondent violated section 7116(a)(1) and (2) of the Statute by suspending Giannetti for engaging in protected activity on behalf of FOP.

The only remaining issue is whether the General Counsel's requested remedial order is appropriate. Such request, in addition to a cease and desist order and the posting of the customary Notice to employees, would require the Respondent to rescind the 14-day suspension issued to Michael Giannetti; expunge all references to the suspension from his personnel file; and reimburse him for lost pay, allowances and differentials resulting from the unlawful suspension. I conclude that such a remedial order is consistent with those issued by the Authority in similar circumstances. See *United States Department of Justice, Bureau of Prisons, Metropolitan Correctional Center, New York, New York*, 27 FLRA 874, 882-83 (1987); *Department of the Navy, Naval Facilities Engineering Command, Western Division, San Bruno, California*, 45 FLRA 138, 160-61 (1992); *U.S. Department of the Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California*, 38 FLRA 567, 570-71 (1990). Accordingly, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and

section 7118 of the Statute, the Authority hereby orders that the U.S. Department of Veterans Affairs, Medical Center, Jamaica Plain, Massachusetts shall:

1. Cease and desist from:

(a) Suspending Michael Giannetti or any other bargaining unit employee for filing letters of complaint with management or otherwise engaging in protected activity on behalf of the Fraternal Order of Police, Greater Boston Lodge or any other labor organization as defined in section 7103(a)(4) of the Statute.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

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

(a) Rescind the 14-day suspension of Michael Giannetti from November 29 through December 12, 1992, expunge any reference to such disciplinary suspension from his personnel records, reimburse him for the loss of pay he suffered by reason of the suspension, and restore to him any right or privilege he may have lost by such disciplinary suspension.

(b) Post at its facility in Jamaica Plain, Massachusetts 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 Director of the U.S. Department of Veterans Affairs, Medical Center, Jamaica Plain, Massachusetts, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

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

Issued, Washington, D.C., March 7, 1996.

GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Veterans Affairs, Medical Center, Jamaica Plain, Massachusetts violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT suspend Michael Giannetti or any other bargaining unit employee for filing letters of complaint with management or otherwise engaging in protected activity on behalf of the Fraternal Order of Police, Greater Boston Lodge or any other labor organization as defined in section 7103(a)(4) of the Statute.

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 Statute.

WE WILL rescind the 14-day suspension of Michael Giannetti from November 29 through December 12, 1992, expunge any reference to such disciplinary suspension from his personnel records, reimburse him for the loss of pay he suffered by reason of the suspension, and restore to him any right or privilege he may have lost by such disciplinary suspension.

(Agency)

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 its provisions, they may communicate directly with the Regional Director, Boston Region, Federal

Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA 02110 and whose telephone number is:
(617) 424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. BN-CA-30274, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Richard D. Zaiger, Esquire
Federal Labor Relations Authority
99 Summer Street, Suite 1500
Boston, MA 02110-1200

Mr. Michael C. Giannetti
Union Representative
Fraternal Order of Police
Boston, MA 02209

Mr. Alan L. Rosenman
Agency Representative
Office of District Counsel
U.S. Department of Veterans Affairs
JFK Federal Building, Room 1675
Boston, MA 02203

Dated: March 7, 1996
Washington, DC