

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

MEMORANDUM

DATE: March 21, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND

Respondent

and

Case No. CH-CA-50543

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 214, AFL-CIO

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

U.S. DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 214, AFL-CIO Charging Party	Case No. CH-CA-50543

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 **APRIL 22, 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: March 21, 1996
Washington, DC

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

U.S. DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 214, AFL-CIO Charging Party	Case No. CH-CA-505431

Major Michael A. Fleming
For the Respondent

Philip T. Roberts, Esquire
Nick Duris, 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., and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent unilaterally implemented changes of the merit promotion system concerning consideration of local candidates and use of the DOD stopper list without notice to Council 214.

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This case had been consolidated with Case No. CH-CA-50529 which, at the hearing, was settled and, accordingly, Case No. CH-CA-50529 was severed and remanded to the Regional Director.

This case was initiated by a charge filed on April 6, 1995 (G.C. Exh. 1(b)), the Complaint and Notice of Hearing issued on December 20, 1995 (G.C. Exh. 1(c)) and set the hearing for February 27, 1996, pursuant to which a hearing was duly held on February 27, 1996, in Dayton, Ohio, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, and to introduce evidence bearing on the issues involved.

Findings

General Counsel presented testimony and evidence which clearly established that, as alleged in the Complaint, Respondent had unilaterally implemented changes of the merit promotion system without notice to Council 214, the exclusive representative. At the conclusion of General Counsel's case, I stated that the evidence showed that the Union had no notice; and that all would agree that Respondent did make a unilateral change. Accordingly, I stated that it appeared to me to be an open and shut case; that Respondent violated its obligation to give the Union notice and opportunity to bargain before changing an existing condition of employment. I further stated that I intended to order a restoration of the status quo ante. Respondent presented no testimony (Tr. 42-49) and, as General Counsel had established the alleged violation of Sections 7116(a)(5) and (1) of the Statute, I requested the parties to submit a proposed order. The parties have done so; although submitted a day later than requested, under the circumstances, any delay is waived; and, having found the proposed order proper and fully responsive, I adopt it and recommend that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio, shall:

1. Cease and desist from:

(a) Unilaterally changing the method of referral and placement of employees in Career Program vacancies, without first giving appropriate notice to the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of its employees, and affording it the opportunity to bargain over the decision to effectuate such a change.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights assured to them by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Reissue all certificates used for filling AFGE Council 214 bargaining unit vacancies, wherein AFGE Council 214 bargaining unit members were stricken from the certificate, which occurred after December 20, 1994 pertaining to a Career Program position vacated due to the separation incentives and which resulted in a selection at any Air Force Materiel Command installation pursuant to, in accordance with or which was affected by the Air Force approved Exception to Air Force Career Program Referral process which was granted on or about December 20, 1994 and evaluate the candidates who are referred for the vacancies.

(b) All candidates will be given *bona fide* consideration and notice of referral in accordance with Air Force Career Program procedures. If it is determined, after *bona fide* consideration by the selecting official, that a bargaining unit candidate who had been excluded as a result of the Exception to Air Force Career Program Requirements would have been selected, select such employee and place that employee in the position to which he or she would have been entitled, and make him or her whole, with interest, for any losses he or she incurred as a result of its unlawful action.

(c) Post at its facilities wherever bargaining unit employees are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of the forms, they shall be signed by the Commander, Air Force Materiel Command, and they shall be posted and maintained for 60 consecutive days 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.

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

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 21, 1996
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio 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 unilaterally change the method of referral and placement of employees in Career Program vacancies, without first giving appropriate notice to the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of our employees, and affording it the opportunity to bargain over the decision to effectuate such a change.

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 reissue all certificates used for filling AFGE Council 214 bargaining unit vacancies, wherein AFGE Council 214 bargaining unit members were stricken from the certificate, which occurred after December 20, 1994 pertaining to a Career Program position vacated due to the separation incentives and which resulted in a selection at any Air Force Materiel Command installation pursuant to, in accordance with or which was affected by the Air Force approved Exception to Air Force Career Program Referral process which was granted on or about December 20, 1994 and evaluate the candidates who are referred for the vacancies.

WE WILL give all candidates *bona fide* consideration and notice of referral in accordance with Air Force Career Program procedures. If it is determined, after *bona fide* consideration by the selecting official, that a bargaining unit candidate who had been excluded as a result of the Exception to Air Force Career Program Requirements would have been selected, we will select such employee and place that employee in the position to which he or she would have been entitled, and make him or her whole, with interest, for any losses he or she incurred as a result of its unlawful action.

(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 its provision, they may communicate directly with the Regional Director for the Chicago Region of the Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, Illinois, 60603-9729, and whose telephone number is: (312) 353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. CH-CA-50543, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Major Michael A. Fleming
HQ Air Force Material Command
4225 Logistics Avenue, Suite 23
Wright-Patterson AFB, OH 45433-5762

Philip T. Roberts, Esquire
Nick Duris, Esquire
Federal Labor Relations Authority
55 West Monroe, Suite 1150
Chicago, IL 60603-9729

REGULAR MAIL:

Mr. Walter A. Squires
Executive Assistant
American Federation of Government
Employees, Council 214, AFL-CIO
4375 Chidlaw Road, Suite 6
Wright-Patterson AFB, OH 45431-5006

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

Dated: March 21, 1996
Washington, DC