

DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY'S
OFFICE SOUTHERN DISTRICT OF TEXAS HOUSTON,
TEXAS Respondent and AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, LOCAL 3966, AFL-CIO
Charging Party

Case No. DA-CA-01-0442

Melanie Russell, Esquire For the Respondent
Jeanell Nero-Walker, Representative For the Charging Party
John M. Bates, Esquire For the General Counsel, FLRA
Before: RICHARD A. PEARSON Administration Law Judge

DECISION ON MOTION TO DISMISS

On June 28, 2001, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing alleging that the Department of Justice, United States Attorney's Office, Southern District of Texas, Houston, Texas (Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). The Respondent subsequently filed an Answer and an Amended Answer denying that it had violated the Statute.

On January 7, 2002, the President issued Executive Order 13252, which amended Executive Order 12171 and determined that the Statute cannot be applied to the United States Attorney's Offices in the Department of Justice in a manner consistent with national security requirements. The Executive Order thereby excludes the United States Attorney's Offices from the Statute's coverage.

On January 14, 2002, the Respondent filed a Motion to Dismiss for Lack of Jurisdiction. The General Counsel did not respond to the substance of the Motion to Dismiss but instead requested that the hearing on the Complaint be postponed indefinitely. On January 22, 2002, the hearing was indefinitely postponed.

On April 25, 2002, the Authority issued its decision in another case involving the same parties, citing Executive Order 13252 and dismissing the complaint for lack of jurisdiction. 57 FLRA No. 163 (2002). For the same reasons cited by the Authority in that case, it is clear that the Respondent is not covered by the Statute and therefore, Respondent's Motion to Dismiss is hereby, Granted.

Based on the foregoing, I recommend that the Authority issue the following Order:

ORDER

IT IS ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, April 30, 2002.

RICHARD A. PEARSON

Administrative Law Judge