

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2501 Respondent	
and CLARENCE C. BROWN, An Individual Charging Party	Case No. AT-CO-30678

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 **MAY 22, 1995**, and addressed to:

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

SALVATORE J. ARRIGO
Administrative Law Judge

Dated: April 21, 1995

Washington, DC

MEMORANDUM

DATE: April 21, 1995

TO: The Federal Labor Relations Authority

FROM: SALVATORE J. ARRIGO
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2501

Respondent

and Case No. AT-
CO-30678

CLARENCE C. BROWN, 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 2501 Respondent	
and CLARENCE C. BROWN, An Individual Charging Party	Case No. AT-CO-30678

Stuart A. Kirsch, Esq.
For the Respondent

Sherrod G. Patterson, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case 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 an unfair labor practice charge having been filed by the captioned Charging Party 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 telling employee Clarence Brown the Union would not arbitrate his grievance unless Brown paid the Union's share of the cost of the arbitration and by refusing to arbitrate the employment suspension of Brown because Brown refused to help pay the cost of the arbitration.

A hearing on the Complaint was conducted in Memphis, Tennessee, 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 case, 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 American Federation of Government Employees, Local 2501 (sometimes herein the Union or Respondent) has been the exclusive collective bargaining representative of a unit of approximately 1500 employees of the Defense Logistics Agency, Defense Distribution Region Central, Memphis, Tennessee (sometimes the Agency or the Depot).

On May 12, 1992 employee Clarence Brown was given a Notice of Proposed Suspension by his supervisor which alleged that Brown had been absent from his worksite without authorization (AWOL) and "defiance of and contemptuous behavior toward constituted authority." Brown took issue with the allegations and the proposed penalty of five days suspension and, immediately upon receiving the notice, brought it to the attention of Nathaniel Boyd, the Union President. Boyd advised Brown to file a grievance and the Union would take the matter through the grievance procedure.² Brown was not a member of the Union and, without any encouragement by Boyd or any Union official, Brown joined the Union sometime after his discussion with Boyd, above. Brown signed an authorization for payroll dues deduction on May 27, 1992 which was certified by Boyd on June 2, 1992.

On June 2, 1992 Brown filed a personal reply to the Agency's Notice of Proposed Suspension in which he contested the allegations contained in the Notice. Notwithstanding his reply, on June 22, 1992 Respondent issued a Notice of Decision to suspend Brown for five days effective July 13. The Notice stated that Brown could file a grievance on the decision and on June 30, Union President Boyd requested a five day extension of time to file a grievance on Brown's proposed suspension. The request stated that additional time was necessary to obtain materials "to properly represent" Brown. The request was granted and on July 7,

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Respondent's unopposed motion to correct the transcript is hereby granted.

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Brown had previously been represented by the Union in various other grievances he had filed.

1992 Boyd filed a grievance on behalf of Brown challenging the proposed suspension, attaching various regulations and documents upon which Boyd was relying, including a prior arbitration decision. Boyd also requested that Brown's proposed suspension be delayed until Respondent reviewed the case and rendered its final decision which, Boyd suggested, might affect the implementation or "mitigation" of the proposed discipline.

Brown's proposed suspension was put in abeyance and on July 27, 1992 Respondent issued its decision finding the AWOL charge to be inappropriate but sustaining the allegation of disrespectful and contemptuous behavior on the part of Brown toward his supervisor.³

After receiving Respondent's decision, Brown and Union President Boyd had a number of conversations concerning the matter. Brown indicated he wished to have his suspension arbitrated. Brown testified:

A Well, we had several discussions about this. It was probably ongoing for about a week or so but in the end what Mr. Boyd really was trying to get across to me that the Union would arbitrate it but they would expect me to pay half of the costs of arbitrating the case and I didn't go along with this. I was in total disagreement with this.

Q During your first discussion with Mr. Boyd, Mr. Brown, was there any discussion that you would have to pay for the cost of the arbitration?

A Yes, it was.

Q Did Mr. Boyd state why you needed to pay this one-half?

A Well, the impression I got is - from Mr. Boyd and from several other people that was closely associated with this case was I wasn't a Union member and I didn't see where this played any role at all by not being a Union member.

. . . .

Q Did Mr. Boyd state how much you would have to pay to arbitrate the case, Mr. Brown?

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As a result, Brown was suspended without pay for five work days beginning August 20, 1992, which resulted in an estimated \$300 to \$400 in lost wages.

A He told me twelve, fifty, twelve hundred and fifty bucks.

Q Did he state - make any statement regarding the merits of the arbitration?

A Well, he told me that since I wasn't a Union member at the time the incident occurred and when I did join that I hadn't been in the Union long enough to have that kind of money deducted from my check to cover this. That's why he expected me to pay this twelve hundred and fifty bucks.

When asked again if Boyd made any statement to him regarding his chances of winning, Brown testified that Boyd said he thought he had a pretty good chance of winning. Brown further testified:

Q Did you have any further discussions with Mr. Boyd about the arbitration of your grievance?

A Yes, I did. I started going to the Union meetings, the monthly meetings, and I was trying to get - to announce it to why they expected me to pay half of the costs to arbitrate it. This went on approximately three months because I went to about three Union meetings trying to get an answer to why they wanted me to pay half of the costs.

Q Who did you speak with during these meetings?

A Mr. Boyd.

Q What did Mr. Boyd state during these meetings?

A Well, he never was really committal but in the end - I think about the last meeting that I attended he appointed three committee members to investigate this case to see if it had merit enough to go to arbitration. I think he appointed Mr. Jenkins, Mr. Norman Miller and Ms. Ruby Barnette but for some reason Mr. Jenkins excused himself from that committee and Mr. Boyd then appointed Mr. William Hendrix.

According to Union President Boyd, Brown brought up arbitrating his grievance around the time he received the Agency's letter notifying him of the decision to suspend. During this period of time, Boyd explained to Brown that in order to have the Union take a grievance to arbitration, the Union followed the practice of having the individual seeking arbitration to present the matter to the Union members at a

Union meeting and then appointing a three member committee of employees to investigate the case and give its nonbinding recommendation to the President regarding whether the case should be arbitrated.⁴ Boyd invited Brown to attend the next Union meeting and present his case to the membership. Boyd denied ever telling Brown at any time that being required to pay the Union's half of the cost of arbitration had anything to do with Brown's Union membership or lack thereof. Indeed, Boyd denied knowing any details concerning Brown's membership status in August 1992.

The record reveals Brown and 24 other individuals attended the Union meeting of August 15, 1992. Union minutes of the meeting regarding this matter state:

Mr. Clarence Brown approached the body to get an approval on his arbitration. The body will elect 3 people to investigate Mr. Brown's case to see if it needs to go to arbitration. It was motion [sic] to select a committee and based on the committee findings the body will decide whether to arbitrate.

A committee of three employees present at the meeting was formed with the "approval" of those in attendance.

On August 18, 1992, Union President Boyd filed with the Agency Civilian Personnel Office a request for arbitration of the Brown matter. Although a decision had not been made by the Union to arbitrate the case, Boyd made the request at this time so the request would not be "untimely." Thereafter the Union and the Agency selected an arbitrator and on November 4, 1992 the arbitration was scheduled for December 9, 1992. On November 18 the arbitrator's service was estimated to cost a total of \$2775.00.

In October 1992, Union President Boyd asked Union Representative William Hendrix to replace a member of Brown's arbitration review committee who had withdrawn. Hendrix, an employee at the Depot since 1984, became a Union member in 1989 and was appointed by Boyd as a Union Representative at that time. As a Representative, Hendrix was responsible to carry out a wide range of duties assigned by the Union President, including grievance representation, investigations and research. According to Hendrix, after he became a member of the Clarence Brown arbitration review committee he met with Boyd and was given Brown's grievance file to review. After reviewing the file Boyd briefed Hendrix as to the details of the case, about which Boyd was

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Boyd, as Union President, retained the ultimate authority to decide which cases the Union would take to arbitration.

familiar. At this meeting, according to Hendrix, during general conversation concerning the grievance Boyd related to Hendrix when Brown joined the Union.⁵

After meeting with Boyd, Hendrix reviewed Brown's grievance file and wrote a letter dated October 17, 1992 to Boyd conveying his observations from his review of the file. In the letter Hendrix concluded that the Agency's charges against Brown "lack substance" and recommended the Union should take Brown's case to arbitration. However, Hendrix' letter went on to state:

It is my recommendation that Mr. Brown be responsible to pay half the cost for this local to take his grievance to arbitration. Due to the fact that this grievance occurred before Mr. Brown joined our local and became a member. I do not feel that it would be right to ask our members to carry the full financial responsibility, when the action occurred before he became a member of A.F.G.E. Local 2501.

In the letter Hendrix also suggested a system of payment whereby Brown would be required to pay a \$300 down-payment before the Union would go to arbitration on his case. Hendrix also gave copies of this letter to the other two members of the Brown arbitration review committee.

Hendrix replacement on Brown's review committee was announced at the Union's October 17, 1992 monthly meeting. At that same meeting Hendrix presented to the attendees a grievance on his own behalf he wished to have arbitrated and a three member committee was formed to review the matter and "render a decision" on the request. The committee consisted of Dorothy Snelling, Henry Toney and James Brown.

Hendrix also showed a copy of the letter concerning Brown's grievance to employee Eugene Newbern who was a Union steward at the time for an area different from that in which Brown worked.⁶ Newbern nevertheless was aware of Brown's grievance and had "advised" him on the matter even before his suspension. Newbern disagreed with the portion of Hendrix' letter regarding Brown paying for the arbitration,

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Boyd testified that during this meeting with Hendrix, whether Brown was a member and how long he had been a member "came up", but he told Hendrix that he didn't know if Brown was a member. I credit Hendrix over Boyd in this regard.

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Newbern, employed at the Depot for about five years, had been a steward since early 1990 and ran for the Union presidency in 1992 or 1993.

telling Hendrix "most members, based on his experience [do] not pay for arbitration even based on the Local's finances." Newbern testified that he came to this conclusion based only upon reading the Union's financial reports and did not know if other cases existed in which an individual might have been required to pay for an arbitration.⁷

Brown's proposed arbitration was subsequently discussed at the Union's regular monthly meeting held on December 12, 1992.⁸ The meeting was attended by 13 individuals. The Union's minutes of the meeting, unedited, states, in relevant part:

Ms. Snelling discussed Mr. Hendrix case about taking it to arbitration. Ms. Snelling stated that she and Mr. Toney agreed to take the case to arbitration. Lengthy discussion on the floor whether the case has merits. Motion on the floor by Mr. Newbern to go ahead and arbitrate the case and it was second by Ms. Snelling. Discussion on the floor. The president does not feel that he can win the case. Also, included a lengthy discussion on Mr. Brown case. The president also stated that he felt that Mr. Brown might get his case mitigated some but not win the case straight out. Recommended by Mr. Hendrix to let the union pay all of Mr. Brown cost. Mr. Newbern withdrew his motion and made a suggestion that all the committee members meet on a certain date. Mr. Hendrix stated that this union should be re-suited to get our gears in motion and that he would get him a lawyer and sue the local. Final argument, the president stated that if the committee members did not get any more information to the executive staff within the next week from this day both cases will be dropped for consideration to arbitrate.

Union President Boyd testified he discussed the grievances with the Union's Executive Board prior to the December meeting and came to the conclusion that he could not win the grievance and while an arbitration might result in Brown's suspension being reduced by a day or two, it was

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Newbern also testified that Brown's was the first case to his recollection that a committee had been appointed to determine whether a matter went to arbitration. However, the record does not disclose how frequently Newbern attended Union meetings prior to August 1992.

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On December 2 the parties postponed Brown's scheduled arbitration from December 9 to January 26, 1993.

not in the Union's best interest to arbitrate the matter. No additional information supportive of Brown's grievance had been supplied since the grievance file was first assembled and Boyd felt he had no justification to continue to postpone the arbitration. Boyd reached the same conclusion regarding Hendrix' grievance. Having rejected Hendrix' recommendation and concluded the grievances did not warrant arbitration at Union expense, Boyd announced a one week deadline for supplying additional persuasive evidence. If such evidence was not received, the requests for arbitration would be withdrawn.

Boyd denied discussing Brown's Union membership at the meeting, or indeed at any time, and denied the allegation that Brown's Union membership played a part in the decision that the Union would not pay for Brown's arbitration with Union funds. He testified that no additional evidence was supplied to support the grievances and in late December 1992 or early January 1993, after meeting with the Union's Executive Board which agreed that the request for arbitration should be withdrawn, he told Brown that the Union was not going to arbitrate his grievance but if Brown wished to pay the Union's share of the arbitration cost, he would represent Brown in the proceeding. According to Boyd, Brown declined the offer and replied, "That's all right, don't worry." On January 8, 1993 the Union and the Agency cancelled the request for arbitration of Brown's grievance.

Although Brown acknowledged he was present at the Union meeting of December 12, 1992, he testified that he did not recall anything that occurred, even after reading the Union's minutes of the meeting, supra. Brown further testified it was his understanding that the matter concerning the arbitration of his grievance was under consideration by the Union until sometime in late December or January 1993 when Boyd asked him if he decided to pay half of the arbitration cost and Brown told him he would not. Sometime thereafter, according to Brown, he went to the Union hall, asked to see his grievance folder, and discovered his arbitration had been cancelled.

Union representative Hendrix testified he didn't recall what transpired at the December 12, 1992 Union meeting. Hendrix testified that Union membership had never been a factor in determining whether a case went to arbitration and testified that Boyd did not ask him to take Brown's Union membership into consideration when acting as a member of Brown's arbitration committee. Hendrix also testified he did not discuss with Boyd his October 17, 1992 letter recommending arbitrating Brown's grievance.

With regard to the December 12 Union meeting and relevant conversations, employee Eugene Newbern testified as follows:

Q Did you discuss the arbitration of the case with Mr. Boyd?

A In the Union meetings, yes, not personally one on one.

Q Okay. When did these discussions take place?

A They took place in several Union meetings and we never could come to an agreement based on the discussions of the case and I believe the last discussion that I had that I can recollect it was in December of '92 whereby I made the motion to arbitrate the case and based on the discussion which got a little heated, I think Mr. Boyd at that time recommended that a committee be set up to investigate the case.

. . . .

Q And what . . . was his position as far as his opinion regarding the grievance, the arbitrability of it?

A Well, in early processes it was a good case. Then later on down the line in that meeting if I recollect correctly - maybe if not that meeting - Mr. Brown's membership became an issue and that's when I - I believe that's when the heated discussion became about because as I informed the membership that based on my Union experience that you could not use your membership or the time frame. I think the time was that he hadn't - the word was that he hadn't been in the Union long enough. He hadn't paid enough dues into the Local and that he should pay half and I think that was recommended by Mr. Hendrix also in the letter prior to that meeting.

I strenuously objected to that, you know, and that's where we left it in that stage. So, after the heated discussion, after my motion, had the discussion on the motion, then I withdrew my motion and that's where we left it.

Q Was there any decision made in that meeting not to arbitrate Mr. Brown's grievance?

A No, sir. I believe in that meeting in the heated discussion - I mean I say heated because it was heated - the President made mention that he would select a committee and that if the committee doesn't get back with him in a certain period of time, then he would drop the case.

. . . .

Q Was there general discussion of the - whether to arbitrate the grievance or not?

A Yes, there was.

Q Okay. What was Mr. Boyd's position regarding whether the case should be arbitrated or not arbitrated?

A Mr. Boyd's position was the case would be arbitrated if Mr. Brown would pay half and that's when I asked the question, why half? I said, he's a bargaining unit employee and the discussion went on is that - Mr. Boyd - that he hadn't paid dues into the Local long enough for him to go to arbitration and that was a statement made by him. From that point on, you know, whatever was stated after that, you know, I can't recollect but I do know that for a fact.

Q Did you have - did this issue come up in prior Union meetings?

A Yes, sir, it did.

Q The subject matter of arbitrating the grievance?

A Yes, sir.

Q Okay. What - when were those meetings?

A I believe those meetings began in August of '92, somewhere in that area, maybe before then, but I know from that point - from the time that Mr . Brown filed the grievance I think it came up several times after that up until December and that's when it ended.

Q Did you attend the August, 1992, meetings?

A Yes, sir.

Q What was Mr. Boyd's position with regard to arbitrating the grievance at that meeting?

A It was still on the table to be arbitrated at that time.

Q Okay. Did he make any statements regarding Mr. Brown's membership or lack of membership or short-term membership in the Union?

A I don't know - I can't recall if it was in August or not but I - in December I do know that for a fact because my notes recollect that. Prior to that, my notes does not recollect that, him saying that.

Newbern ultimately testified that his best recollection was that the only time in his presence that Boyd mentioned Brown being required to pay a portion of the cost of the arbitration was during the December 12 Union meeting. Newbern further testified:

Q Referring back to that December meeting, you recall, do you not, that Mr. Hendrix's case was discussed also regarding whether to take that case to arbitration?

A I don't know if his case was discussed in the December meeting but I know it was discussed in several meetings and eventually his case was dismissed but I don't know what month at this point in time.

Q When you say was dismissed, the decision was made not to take his case to arbitration?

A Yes, sir.

Q And do you have any reason to believe that his case was not reviewed by a grievance committee?

A As far as I know, it was not.

Q And do you know whether Mr. Hendrix had an opportunity to present his case to the membership?

A Mr. Hendrix I believe presented his case to the membership on one occasion. At that point a decision was not - at the time he presented his case the decision was not made at that time. I believe several meetings thereafter Mr. Hendrix's

case came up and at that time Mr. Hendrix was not present and his case was dismissed. It was voted not to arbitrate.

The record reveals that for some time the Union has experienced a serious shortage of funds. In 1991 the Union established a policy of requiring individual employees, whose grievances the Union concluded involved issues which did not affect other employees or general concerns to the Union, to pay for the Union's half of the cost of arbitration if the individual wished to have the matter arbitrated. Evidence was received at the hearing sufficient to establish that this policy has been consistently applied by the Union without regard to Union membership or duration of Union membership. Union President Boyd testified the specific factors he considered in deciding whether the Union would pay for the arbitration of an individual's grievance were: the merits of the case; the financial condition of the Local; whether the issue involved impacts on the entire unit or affects employees other than the grievant. In any event, when the Union decided not to proceed to arbitration and the employee chose to have the matter arbitrated, and was willing to pay the Union's share of the cost of the arbitration, the Union would represent the individual at the arbitration proceeding.

The record further reveals that during the period when Brown's grievance was being considered by the Union, the Union owed the National office of the American Federation of Government Employees back per capita taxes of between \$35,000 and \$40,000. The Union's minutes for the December meeting indicate at that time the Union also owed \$3639.95 for two cases which had previously been arbitrated. The minutes further reveal that Boyd presented to those in attendance at the meeting a letter dated November 30 from National Union President Blaylock threatening to put the Local Union under trusteeship.

Additional Findings, Discussion and Conclusion

The General Counsel contends Respondent violated the Statute by Union President Boyd allegedly telling employee Brown that the Union's arbitration of his grievance was contingent on his contributing to the cost of the proceeding because Brown was not a member of the Union at the time the incident leading to Brown's grievance occurred. The General Counsel further contends the Union violated the Statute by breaching its Statutory duty of fair representation when it canceled the arbitration, allegedly because of Brown's failure to contribute to the arbitration cost. Respondent essentially denies that Boyd ever made the statement attributed to him and further denies that Brown's

arbitration was canceled because of considerations concerning his lack of Union membership. Rather, Respondent avers the Union treated Brown's case the same as any other employee, regardless of Union membership.

I find Union President Boyd made no mention of the payment for arbitration to Brown or the membership in general until the December 12 meeting. In this regard I do not credit the testimony of Brown that Boyd told him early on that he would have to pay the Union's share of the cost if he wished to have his grievance arbitrated. I particularly note that the cost of the arbitration was apparently not set until later in November 1992. Further, Newbern, while "advising" Brown regarding his grievance beginning sometime before Brown's suspension, did not testify that he was aware of any requirement of Boyd for Brown to pay a share of the arbitration when the grievance was being processed. Newbern's first knowledge of any such requirement was clearly when he saw Hendrix' October 17, 1992 letter which addressed the subject. Newbern's testimony regarding Boyd's position on the matter indicates all his knowledge came from the discussion at the December 12 Union meeting.

I conclude that while Boyd's comment at the December 12 Union meeting that the arbitration committee should consider Brown's length of membership when deciding whether arbitration would be pursued was improvident and indeed violative of the Statute, the statement is not conclusive evidence that the Union's failure to arbitrate Brown's grievance was violative of the Statute. Rather, it must be considered not in isolation but along with other facts and circumstances relevant to Boyd's motivation for not paying for Brown's arbitration. I note, the comment did not cause the committee to recommend against arbitration. I further note that Boyd refused to have the Union pay for the arbitration of Hendrix' grievance even though Hendrix was a long time Union member and a Union representative as well and, importantly, his arbitration committee voted to take his case to arbitration.

While I credit the testimony of employee Newbern and find Union President Boyd did state at the December 12 meeting that the Brown grievance committee, when considering the matter, should take Brown's membership into consideration when recommending whether the Union should proceed to arbitrate Brown's grievance, that I believe was done in an attempt to direct the committee to realistically evaluate the nature of the issue to be arbitrated against the state of the Union's finances, virtual bankruptcy. Boyd was of the opinion that Brown's case was not worth the cost of arbitrating in view of the issue involved and considering

the financial situation of the local. It appears to me that Boyd was seeking to have the committee recommend against arbitration so he would not have to independently decide the matter or issue a decision contrary to the committee.⁹ Therefore, in the circumstances herein I do not find that Boyd's statement regarding Brown's lack of membership was an indication of improper motivation for requiring Brown to pay for his arbitration.

The Union presented evidence that between 1991 and early 1993 three instances occurred of other employees paying the Union's share for arbitration: one concerning a 1991 incident involving a Union member and two other incidents involving employees who were not members when arbitration was evoked in their cases. Thus the record reveals that since 1992 any individual, regardless of Union membership, wishing to have a grievance proceed to arbitration was required by Boyd to pay for the Union's share of the arbitration, absent an issue which impacted on the unit. Brown's case was no different than other recent cases and Boyd's action herein was consistent with the Union's established practice in similar situations. Accordingly, I conclude that Boyd refused to arbitrate Brown's grievance with Union funds because of the Union's financial plight, his estimation of the strength of the case, and the lack of any justification for the Union taking the matter to arbitration, e.g. a matter affecting the collective bargaining unit in general.

In all the circumstances I conclude the preponderance of the evidence does not establish that the Union's cancellation of Brown's arbitration proceeding was for reasons violative of section 7116(b) (1) and section 7116(b) (8) of the Statute as alleged.

However I conclude that Union President Boyd's statement to the arbitration committee that it should consider Brown's length of Union membership when reaching its recommendation regarding the Union taking Brown's case to arbitration was violative of section 7116(b) (1) of the Statute. Such statements clearly interfere with, restrain and coerce employees in the exercise of their protected right under section 7102 of the Statute to join or refrain from joining the Union freely and without fear of penalty or reprisal. See National Treasury Employees Union and NTEU Chapter 229, 22 FLRA 214 (1986), rev'd on other grounds, 800

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In his testimony Boyd on a number of occasions attempted to make it appear he was executing the decision of a grievance-arbitration committee or the Executive Council when, in reality, he had full authority to decide these matters regardless of what these bodies concluded.

F.2d 1165 (D.C. Cir. 1986) and American Federation of Government Employees, Local 1778, AFL-CIO, 10 FLRA 346 (1982).

To the extent that the General Counsel is alleging any action by Union Representative Hendrix violated the Statute, I reject such a contention. The Complaint alleges that Respondent cancelled Brown's arbitration through conduct of Hendrix and Boyd. I conclude the record does not support a finding that Hendrix' action was responsible for the withdrawal of Brown's arbitration. Nor do I find that Hendrix was acting as an agent of the Union when encouraging Boyd, through the letter of October 17 and statements at the December 12 Union meeting to consider the extent of Brown's Union membership when assessing the cost of arbitration. I find the record clearly indicates that all involved were aware from the circumstances of Hendrix' membership on the arbitration committee and the discussion at the December Union meeting that Hendrix was acting as a Union member and not a Union representative when taking the position he espoused.

Accordingly in view of the foregoing I shall recommend the Authority issue 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 American Federation of Government Employees, Local 2501, shall:

1. Cease and desist from:

(a) Creating the impression to unit employees seeking representation by the American Federation of Government Employees, Local 2501, the employees' exclusive representative, that the length of time a unit employee has paid dues to the Union will determine whether the Union will pay for arbitrating a matter concerning that employee.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations 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 Defense Logistics Agency,

Defense Distribution Region Central, Memphis, Tennessee, 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, Local 2501, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members and other employees are customarily posted. Reasonable steps shall be taken by the American Federation of Government Employees, Local 2501, to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Submit appropriate signed copies of such Notice to the Commanding Officer of the Defense Logistics Agency, Defense Distribution Region Central, Memphis, Tennessee, for posting in conspicuous places where unit employees represented by the American Federation of Government Employees, Local 2501 are located. Copies of the Notice should be maintained for a period of 60 consecutive days from the date of posting.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Regional Office, Federal Labor Relations Authority, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, April 21, 1995

SALVATORE J. ARRIGO
Administrative Law Judge

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 NOTIFY OUR MEMBERS AND EMPLOYEES THAT:

WE WILL NOT create the impression to unit employees seeking our representation that the length of time a unit employee has paid dues to the Union will determine whether the Union will pay for arbitrating a matter concerning that employee.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce unit employees in the exercise of their rights assured by the Statute.

(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 Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SALVATORE J. ARRIGO, Administrative Law Judge, in Case No. AT-CO-30678, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Stuart A. Kirsch, Esq.
Assistant General Counsel-Litigation
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REGULAR MAIL:

National President
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Dated: April 21, 1995
Washington, DC