DEPARTMENT OF THE AIR FORCE WARNER ROBINS AIR LOGISTICS CENTER, WARNER ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-40633

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 30, 1995**, 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: April 27, 1995

Washington, DC

MEMORANDUM DATE: April 27, 1995

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
WARNER ROBINS AIR LOGISTICS
CENTER, WARNER ROBINS AIR FORCE
BASE, GEORGIA

Respondent

and Case No. AT-CA-40633

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 987

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

DEPARTMENT OF THE AIR FORCE WARNER ROBINS AIR LOGISTICS CENTER, WARNER ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-40633

C. R. Swint, Jr., Esquire
For the Respondent

Mr. Jim Davis
For the Charging Party

Richard S. Jones, 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's denial of a temporary promotion to WG-10 of the Union President because he was on 100% Union business and not available to work violated §§ 16(a)(2) and (1).

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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 (a)(2) will be referred to, simply, as, "16(a)(2)".

This case was initiated by a charge filed on May 20, 1994 (G.C. Exh. 1(a)), the Complaint and Notice of Hearing issued on August 30, 1994 (G.C. Exh. 1(c)), and set the hearing for a date, time and place to be determined. By Order dated September 7, 1994, the hearing was set for November 9, 1994, in Warner Robins, Georgia, pursuant to which a hearing was duly held on November 9, 1994, in Warner Robins, Georgia, 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 the Charging Party exercised. At the conclusion of the hearing, December 9, 1994, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief, received on December 12, 1994, which have been carefully considered. On the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, AFL-CIO (AFGE), is the exclusive representative of a nationwide consolidated unit of employees of the Air Force Logistics Command (AFLC). AFLC and AFGE, Council 214, AFLC Locals, negotiated an Agreement (Res. Exh. 1) which was effective at all times material.

2. American Federation of Government Employees, Local 987 ("Union") is an agent of AFGE for the purposes of representing employees at Robins Air Force Base, Georgia, and is one of the constituent Locals of Council 214.

3. Mr. Jim Davis is a WG-8 sheet metal mechanic and has been at Robins Air Force Base about nine years (Tr. 12). On his annual performance appraisal for September 1, 1991, he received an overall rating of "Superior"; and for September 1, 1992, "Excellent" (G.C. Exh. 4; Tr. 18). In November, 1992, Mr. Davis was elected President of the Union for a three year term (Tr. 23) and immediately upon assumption of office designated himself as a full-time representative[2], pursuant to Article 4, Section 4.13 of the parties' Agreement (Res. Exh. 1, Art. 4, Sec. 4.13; Tr. 24). Indeed, as Mr. Judson L. Rigsby, Jr., a Labor Relations Specialist for Respondent

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[2] Mr. Davis' performance appraisal for September 1, 1993, a period spent largely on official time as Union representative, was also, "Excellent" (G.C. Exh. 4), a carry-over rating (General Counsel's Brief, p. 2).

(Tr. 140) stated, the Union chooses to do this because the President is a paid position and, thus, it is to the Union's benefit that he be paid, at least in part, by Respondent (Tr. 142).

4. Mr. Davis stated that, "The President's position at our Local is paid on a GS-12 scale, and our organization makes up the difference between whatever your rate of pay is as a Federal employee, to bring you up to a GS-12 scale." (Tr. 15).

5. Mr. Davis is also now President of Council 214 (Tr. 23, 24); however, the record does not reflect the date he became President of Council 214.

6. Since becoming President of the Union, Mr. Davis has continuously been on 100% official time and it is conceded that he has not worked, nor has he been available to work, for Respondent. Mr. Rigsby testified that since 1976 he had been familiar with the status of the President of Local 987 and that no President had worked for Respondent while President (Tr. 141). Mr. Rigsby further testified that he had checked all records he could find to verify his recollection that no President had worked for Respondent while President (Tr. 142). He further stated that prior to 1986, the Union President was on leave without pay while serving as President and was paid a salary by the Union. In 1986, the labor agreement allowed two full-time representatives for the Union (Tr. 141) and subsequently the number was increased to four (Res. Exh. 1, Article 4, Section 4.13(a)).

7. Respondent in 1993 had about 200 to 250 permanent WG-8s in the Production Division of the C-141 Product Management Directorate (Tr. 64, 80). Because of an increase in workload, about 550 temporary WG-8s were hired during 1992-94 (Tr. 67). A WG-8 is an aircraft worker; a WG-10 is a journeyman level mechanic. Many tasks, particularly critical tasks, must be "signed off" by a WG-10 (Tr. 65) which means that he certifies that the work has been appropriately performed (Tr. 66-67).

The large increase of WG-8s created a very unfavorable ratio of WG-8s to WG-10s (Tr. 68). To correct this imbalance, Mr. John W. Ezell, Jr., Deputy Division Chief of the Production Division (Tr. 64), soon after he returned to the C-141 Division in February 1994 (Tr. 99, 107) requested permission to grant temporary promotions to WG-10 (Tr. 71). He was granted permission to make 96 temporary promotions, which were to be for no more than one year (Tr. 72), and personnel furnished him a list of about 105 best qualified

candidates,[3] i.e., permanent WG-8s meeting the qualifications for promotion to WG-10, including Mr. Davis (G.C. Exh. 2). Mr. Ezell selected 96 WG-8s for temporary promotion to WG-10 (G.C. Exh. 3) but he did not select Mr. Davis (Tr. 15, 72).

8. Mr. Ezell stated that he, "Never had a problem with Mr. Davis' work" (Tr. 74) and would have selected him if he had been available to work (Tr. 74, 108, 109). Mr. Ezell stated that he did not select Mr. Davis because,

> "A Well, I needed -- a temporary promotion is designed to give me temporary relief. I did not select Mr. Davis because Mr. Davis was not on hand at that particular time. He would not give me any relief in that arena, none whatsoever. The temporary promotion was only for an one year period.

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[3] Section 12.10 of the Agreement provides, in part,

> "The promotion certificate (the list of names to the selecting official) will contain the names of not more than ten best qualified candidates for the initial vacancy, with one additional name being certified for each additional vacancy . . . ." (Res. Exh. 1, Article 12, Section 12.10).

Assuming, as Mr. Ezell recalled, there were 96 positions to be filled, there would have been 105 names on the certificate (10 + 95). Ms. Marie Prescott, Personnel Staffing Specialist (Tr. 110), thought there were 98 positions and that a list of 107 had been sent to Mr. Ezell (Tr. 111). In any event, she testified that there were 167 qualified WG-8 candidates (Tr. 111-112) from which the list of 105 or 107 of the best qualified were selected (Tr. 116) for the certificate and from which Mr. Ezell selected 96 for temporary promotion to WG-10 (G.C. Exh. 3).

Ms. Prescott stated that Respondent's promotion is an automated promotion system and the register is generated by computer. (Tr. 115-117). After selection was made -- 96 in this instance (G.C. Exh. 3) -- management was asked, because the number of selections was so large, to provide a list of selectees who might have a health problem and these individuals were sent to medical for evaluation as to ability to perform duties required (Tr. 114; Res. Exhs. 2, 3, 4, 5, 6, 7 and 8).

"Let me explain something. That is not to say that after one year, I cannot extend those folks. Workload would dictate what you do with them after the temporary promotion time is up.

"He was not -- he could not provide me any relief. What I was looking to do was to make sure that I had a 10 and an 8 together, to form a team. Mr. Davis could not give me that.

"Q Why couldn't he?

"A Because he was not on hand. I needed folks on hand at that particular time." (Tr. 72-73).

. . .

"A Because he wasn't there, and he wouldn't be there during the length of time of the temporary promotions." (Tr. 74).

9. Mr. Davis stated that after he had received the notification that he was being considered for the promotion (G.C. Exh. 2), he was talking on the telephone to Mr. Ezell about other issues and that he had asked if he were going to get the promotion. He testified that Mr. Ezell responded,

". . . He told me no, that I wasn't going to get it because I was the Union President and I was already receiving GS-12 pay, and I didn't need the money." (Tr. 14-15).

Mr. Ezell testified as follows:

"Q Did you consider the fact that Mr. Davis was receiving some compensation from the Union when you made your decision?

"A I don't have any idea of what he receives. I have no visibility of that.

"Q You never had a discussion with Mr. Davis about that?

"A About?

"Q About his compensation?

"A What he receives from the Union?

"Q Right.

"A No, I have not.

"Q Did you ever have any conversation with Mr. Davis at all about this promotion?

"A I don't think we have ever had a discussion on it, per se, and I am not so sure that it wasn't mentioned some time in some conversations. I have had several conversations with Jim. I don't think we had one precisely on the promotion." (Tr. 87-88).

On examination by Mr. Davis, Mr. Davis did not question Mr. Ezell about any conversation they had had but the following colloquy occurred:

"Q BY MR. DAVIS: Mr. Ezell, you said that if I had not been the Union President, then I would have been selected?

"A No, I didn't say that.

"Q What did you say?

"A If you had been available.

"Q If I had been available, you would have selected me; correct?

"A Yes." (Tr. 108-109).

Mr. Davis was positive that Nedra Bradley worked for Respondent while President of the Union (Tr. 24, 25); but Mr. Rigsby testified that since 1976 he knew of no President working for Respondent while President and, further, that he had found no record that Nedra Bradley worked for Respondent while President (Tr. 142). Further, Mr. Davis assumed that the promotions were effective April 13, 1994, the date on the notification of his non-selection which, on the back, listed those who had been selected (G.C. Exh. 3). First, this ignored the statement on the printed form which, for selectees, states, "You are tentatively selected subject to final approval by the Civilian Personnel Office." Mr. Ezell testified,

"A Any selection that I make is a tentative selection, until they meet all the requirements, whether it has to go through Medical or what. It's just tentatively, and until he meets those requirements, he doesn't get paid for it; no. (Tr. 107-108)."

Ms. Prescott testified, in part, as follows:

> "Q BY MR. SWINT: When were the effective dates set for these promotions?
>
> "A Most of them were May 1.
>
> "Q That is different from when management made its selection; is that correct?
>
> "A Yes, that is correct.
>
> . . .
>
> "Q Some of them were beyond May 1; is that correct?
>
> "A I could not make those effective that had not come back from Medical yet. I had to wait until I got that back from Medical, to see if I could make them effective or not." (Tr. 139-140) (See, also Res. Exhs. 3, 4).

Having considered the record carefully and having found Mr. Ezell an entirely forthright and credible witness, I do not credit Mr. Davis that Mr. Ezell told him he was not going to be promoted because he was Union President and/or that he (Davis) was already receiving GS-12 pay and didn't need the money. To the extent that Mr. Ezell told Mr. Davis anything about his not being selected for promotion, I conclude, as Mr. Ezell responded at the hearing to Mr. Davis, that he told Mr. Davis he would have selected him if he had been available.

10. Four of the employees selected for promotion were Union stewards (Tr. 92).

Conclusions

Quite simply, Mr. Davis was not selected because he was not available to perform agency work. The record shows, for example, that Mr. Joel W. Bullington was not promoted initially because he did not, on April 11, 1994, meet medical requirements and was not promoted until June 8, 1994, when he met medical requirements (Res. Exh. 3).

Although Respondent did not promote anyone who was not available to perform agency work, and Mr. Davis obviously was not available to perform agency work and there was no foreseeable chance that he would be available at least until 1995, Mr. Davis poses a different situation. He is on 100% official time; this was a mass promotion action; it is

conceded he was well qualified; and Mr. Ezell well knew when he did not select him that Mr. Davis was not available because he had been elected President of the Union (Tr. 73, 109). Respondent sums up the argument of the Charging Party and General Counsel as follows:

> ". . . Davis, by reason of his Union activities, made himself unavailable to serve on the temporary WG-10 positions. Hence, to nonselect him for one of these positions because of his unavailability is equivalent to nonselecting him because of his Union activities." (Respondent's Brief, p. 9).

General Counsel presents his position in a somewhat different manner. He asserts that a prima facie showing of discrimination has been made, as follows:

> ". . . In United States Customs Service, Region IV, Miami District, Miami, Florida, 36 FLRA 489 (1990) the Authority reaffirmed the analytical framework to be applied in cases like this. Citing its decision in Letterkenny Army Depot, 35 FLRA 113 (1990), the Authority held:
>
> > the General Counsel must establish that: (1) the employee against whom the alleged discriminatory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the agency's treatment of the employee in connection with hiring, tenure, promotion, or other conditions of employment. Id. at 118. We also stated that the General Counsel may also seek to establish, as a part of its prima facie case, that a respondent's asserted reasons for taking the allegedly discriminatory action are pretextual, or after presentation of the respondent's evidence of lawful reasons, the General Counsel may seek to establish that those reasons are pretextual. Id. at 122-23.
>
> . . .
>
> "Clearly, in this case, the General Counsel has made a prima facie case. It is undisputed that Davis was and is serving as a full-time Union representative, and that Respondent was and is aware of this activity. Serving as a union official is protected activity. Department of the

> Treasury, United States Custom Service, Region IV, Miami, Florida, 19 FLRA 956 (1985). Moreover, Respondent's selecting official, Ezell, admitted that the sole reason Davis was not selected was that he was away from the work site performing Union duties (Tr. 109) . . . ." (General Counsel's Brief, pp. 7-8).

There is no question, of course, that Mr. Davis was engaged in protected activity; but, plainly in this case, Mr. Davis' union activities was not a motivating factor and Respondent did not deny him promotion because of his union activity, unless it is to be inferred as the inherent result of absence on official time for a promotion broadly granted to members of the qualified group. The record is devoid of union animus and affirmatively shows that Respondent promoted no employee who was not available to work. Respondent's justification for not promoting Mr. Davis was not pretextual. Nevertheless, the Authority has rejected an agency's showing of a legitimate justification and that it would have taken the same action in the absence of protected activity and has inferred that protected activity was a motivating factor where a benefit broadly granted is denied an employee solely because of absence on official time. Social Security Administration, Inland Empire Area, 46 FLRA 161 (1992) (hereinafter, "Inland Empire"), where the Authority stated, in part, as follows:

> "The Respondent concedes that Wooten and Quinones were on official time and were 'engaged in protected activity' . . . However, the Respondent argues that this protected activity was not a motivating factor in connection with its distribution of the gainsharing awards . . . We reject this argument.
>
> "The record shows that the Respondent awarded Wooten and Quinones 2 and 3 months' gainsharing awards, respectively, based on information provided by their Area Manager. The Area Manager had, pursuant to . . . request, provided a list of employees, including Wooten and Quinones, whom she determined were not on duty all of fiscal year 1989. As to Wooten and Quinones, the Area Manager noted . . . dates . . . that the employees had 'performed some Agency work' . . . The record further shows that Wooten and Quinones had spent the remainder of fiscal year 1989 on official time . . . and that the Area Director viewed 'official time on Union business [as] time away from Agency work which accomplished the goals Area 6 had to meet to obtain the gainsharing

award.' . . . Further, the record shows that Wooten's and Quinones' gainsharing awards were reduced in proportion to the amount of time that they spent performing representational matters on official time.

"We reject the Respondent's argument that the fact that the Area Director awarded full awards to other Union stewards who had used official time shows that the . . . actions towards Wooten and Quinones were not motivated by consideration of their protected activity. . . .

"Accordingly, contrary to the Respondent's contention, we find that the record amply demonstrates that the fact that Wooten and Quinones were engaged in protected activity on official time . . . was the motivating factor in the Respondent's application of its criterion for determining employees' award amounts. The Respondent's discriminatory application of this criterion resulted in Wooten and Quinones receiving reduced awards. Therefore, consistent with Letterkenny, we find that the General Counsel established a prima facie case of discrimination.

"We further find that the Respondent has not established that: (1) there was a legitimate justification for its action; and (2) it would have taken the same action in the absence of protected activity . . . the criterion used . . . for granting full gainsharing awards . . . was the amount of time that the employee was on the job, regardless of task, during the relevant time. That is, the Respondent based the award on the amount of time that an employee was present during the employee's scheduled hours of duty. . .

". . . Official time under the Statute 'is time which counts toward the fulfillment of an employee's basic work requirement.'. . .

". . . Such duties were performed by these employees during the workday during their scheduled hours of duty . . . We find . . . based on the criterion established . . . for . . . the awards, that Wooten and Quinones qualified to receive full shares.

". . . Wooten's and Quinones' situation was unlike employees who were employed fewer than 12

> months or were on extended sick leave or leave without pay . . . Unlike these employees, who were absent during the workday, Wooten and Quinones were not absent during the workday. Wooten and Quinones were the 'only two employees' who were present during their scheduled hours of duty whose time did not qualify as time . . . the foreseeable effect of the Respondent's standard of award payment is 'obvious--don't spend work time on Union representa-tional duties . . . since it can adversely affect your compensation . . .' . . . Official time used for representational purposes, where approved by an agency, furthers the public interest and contributes to effective and efficient Government. . . ." (46 FLRA at 173-176).

To be sure, this case can be distinguished from Inland Empire, supra. At the outset, Inland Empire, supra, involved payment of gainsharing awards while this case involves the promotion of employees. Respondent here asserts that presence to work as a WG-10 was a necessary pre-condition to promotion; that WG-10s were needed to improve the imbalance of WG-8s to WG-10s; that WG-10s were needed to pair with WG-8s; and that Mr. Davis was not present and afforded no relief whatever. But this was, in essence, precisely the same assertion in Inland Empire, supra, where Wooten and Quinones performed none of the work which resulted in the cost savings from which gainsharing awards were paid. Nevertheless, the Authority held that it was discriminatory to deny them full shares. Here, the promotions was a mass action tinged with legerdemain, whereby 96 erstwhile WG-8s were denominated WG-10s. Not all accepted and, obviously, not all were required to carry out Respondent's design. Inland Empire, supra, teaches that "official time" is equivalent to work time. To deny Mr. Davis promotion to WG-10 did discriminate against him because of his protected activity. He was on official time, approved by Respondent; and he was "present" during his scheduled duty hours; and he must, pursuant to Inland Empire, supra, be considered on duty, and the fact that he does not perform the work of a WG-10 is immaterial, as it was immaterial in Inland Empire that Wooten and Quinones did not perform the work that produced the gainsharing awards.

As he must be deemed to be on duty, Respondent violated §§ 16(a)(1) and (2) of the Statute by denying Mr. Davis

promotion to WG-10.[4] Compare, Equal Employment Opportunity Commission, Phoenix District, Phoenix, Arizona, 50 FLRA No. 46, 50 FLRA 261 (1995).

General Counsel seeks a make whole remedy for Mr. Davis, including his retroactive promotion to the WG-10 position and, backpay (General Counsel's Brief, p. 17). Although Respondent does not address the issue in its Brief, at the hearing it raised the question as to whether Mr. Davis had suffered any, ". . . withdrawal or reduction of all or part of the pay, allowances, or differential . . . .", as required by § 5596(b) of the Back Pay Act, 5 U.S.C. § 5596(b), inasmuch as his pay remained constant at the GS-12 level, the Union paying the difference between the amount Respondent paid him and the rate for a GS-12. While this is true, Mr. Davis' pay and allowances clearly were reduced as the result of Respondent's unjustified or unwarranted personnel action. Thus, his gross earnings for both his contribution to FERS and his payment to the Thrift Savings Plan, as well as the Government's matching contribution to the Thrift Savings Plan were affected, and his gross earnings for Social Security purposes were affected (Tr. 40, 41-42). Nor, of course, can Respondent absolve its wrongdoing at the expense of the Union. I fully agree with General Counsel that all three parts of the Authority's test for determining whether backpay should be awarded, Federal Aviation Administration, Washington, D.C., 27 FLRA 230, 234-235 (1987), were met. Mr. Davis was affected by an unjustified or unwarranted personnel action as the result of Respondent's discriminatory refusal to promote him because of his engagement in protected activity; this action did result in the withdrawal or reduction in his pay, allowances, or differentials; and such withdrawal or reduction would not have occurred but for the unjustified action. Accordingly, Mr. Davis is entitled to be promoted to WG-10, retroactive to May 1, 1994, the date the majority of the promotions were made effective, including backpay plus interest, in accordance with § 5596 of the Back Pay Act, 5 U.S.C. § 5596. Federal Deposit Insurance Corporation, 35 FLRA 241, 248-249 (1990).

Having found that Respondent violated §§ 16(a)(1) and (2) of the Statute, it is recommended that the Authority adopt the following:

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[4] The Union concedes that in the normal situation where there is a single position, for example, that is to be posted for bid, a person on 100% official time would be eligible only if willing to forego the official time and "go back to take the job" (Tr. 152).

ORDER

Pursuant to § 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 the Department of the Air Force, Warner Robins Air Logistics Center, Warner Robins Air Force Base, Georgia, shall:

1. Cease and desist from:

(a) Discriminating against Mr. Jim Davis, or any other employee in the bargaining unit represented by the American Federation of Government Employees, Local 987 (hereinafter, "Union"), the exclusive representative of certain of its employees, by refusing to promote him, or them, to positions for which he, or they, are otherwise fully qualified, because of engagement in protected activity.

(b) In any like or related manner, interfering with, restraining or coercing its 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 Statute:

(a) Make whole Mr. Jim Davis, representative of the Union, by promoting him to WG-10, retroactive to May 1, 1994, and by paying him backpay, with interest, from May 1, 1994, to the date of payment.

(b) Post at its facilities at Warner Robins Air Force Base, Georgia, 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 Commanding Officer, Warner Robins Air Logistics Center, Warner Robins Air Force Base, Georgia, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to § 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, 1371 Peachtree Street, NE, Suite 122, Atlanta, Georgia 30309-3102, 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: April 27, 1995
Washington, DC

NOTICE TO ALL 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 EMPLOYEES THAT:

WE WILL NOT discriminate against Mr. Jim Davis, or any other employee in the bargaining unit represented by the American Federation of Government Employees, Local 987 (hereinafter, "Union"), the exclusive representative of certain of our employees, by refusing to promote him, or them, to positions for which he, or they, are otherwise fully qualified, because of engagement in protected activity.

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 forthwith make Mr. Jim Davis, representative of the Union, whole by: a) promoting him to WG-10, retroactive to May 1, 1994, and b) paying him backpay, with interest, from May 1, 1994, to the date of payment.

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

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-40633, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

C.R. Swint, Jr., Esquire
Chief, Labor Law Division
WR-ALC/JAL
215 Page Road, Suite 186
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Jim Davis, President
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Employees, Local 987
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Richard S. Jones, Esquire
Federal Labor Relations Authority
1371 Peachtree St., N.E., Suite 122
Atlanta, GA 30309-3102

REGULAR MAIL:

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

Dated: April 27, 1995
Washington, DC