

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

PUERTO RICO AIR NATIONAL GUARD 156 TH AIRLIFT WING (AMC) CAROLINA, PUERTO RICO Respondent	Case No. BN-CA-90241
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3936, AFL-CIO Charging Party	

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, issued pursuant to 5 C.F.R. § 2423.31(d), 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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 1, 1999**, 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: April 28, 1999
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM
1999

DATE: April 28,

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: PUERTO RICO AIR NATIONAL GUARD
156TH AIRLIFT WING (AMC)
CAROLINA, PUERTO RICO

Respondent

and

Case No. BN-

CA-90241

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3936, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, issued pursuant to § 2423.31(d), the service sheet, and the transmittal form sent to the parties. Also enclosed in the record are the transcript, exhibits, filings or submissions made by the parties, and my order of April 8, 1999.

Enclosures

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
BOSTON REGION

OALJ

99-24

PUERTO RICO AIR NATIONAL GUARD *
156TH AIRLIFT WING (AMC) *
CAROLINA, PUERTO RICO *

Respondent *

Case No. BN-CA-90241

And *

AMERICAN FEDERATION OF GOVERNMENT *
EMPLOYEES, LOCAL 3936, AFL-CIO *

Charging Party *

BEFORE: GARVIN LEE OLIVER
Administrative Law Judge

April 16, 1999
San Juan, Puerto Rico

DECISION

**EXECUTIVE COURT REPORTERS, INC.
(301) 565-0064**

APPEARANCES

On Behalf of AFGE: Stuart A. Kirsch, Esq.
 AFGE, AFL-CIO
 6724 Church Street, Suite 2
 Riverdale, GA 30274

On Behalf of the GC: Richard Zaiger, Esq.
 Federal Labor Relations Authority
 99 Summer Street, Suite 1500
 Boston, MA 02110

 Julie McCarthy, Esq.
 Federal Labor Relations Authority
 99 Summer Street, Suite 1500
 Boston, MA 02110

On behalf of PRNG: (No appearance.)

(11:15 a.m.)

ADMINISTRATIVE LAW JUDGE OLIVER: This is a bench decision rendered at the close of the hearing pursuant to section 2423.31(d) of the Authority's regulations.

The unfair labor practice complaint alleged that the Respondent committed various unfair labor practices in violation of section 7116(a)(1) of the Federal Service Labor Management Relations Statute by interfering with the rights of employees to engage in conduct protected by section 7102 of the Statute, including the right to engage in lawful informational picketing.

The Respondent's answer denied most of the allegations of the complaint and asserted several affirmative defenses.

The Respondent's pretrial motion to dismiss was denied, and its alternative motion for summary judgment was denied as untimely. The Respondent failed to comply with the Authority's prehearing disclosure requirements set out in sections 2423.23(a), (b), and (c), of the Authority's regulations. And the General Counsel's motions for appropriate sanctions in accordance with 2423.24(e) were granted during the outset, and during the course of the hearing.

The General Counsel and the Charging Party were represented by counsel at the hearing. Counsel for the Respondent had stated, during a prehearing conference, that

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due to the Respondent's position on the lack of Authority

jurisdiction, the Respondent did not intend to be present and participate in the hearing, and it did not do so.

Counsel for the General Counsel and Charging Party proceeded to present their testamentary and documentary evidence, and closing arguments.

Based on the entire record, including my observation of the witnesses, and their demeanor, I make the following findings of fact and conclusions of law, including those proposed by Counsel for the General Counsel and Counsel for the Charging Party:

1. The Puerto Rico Air National Guard, 156th Airlift Wing (AMC), Carolina, Puerto Rico (the Respondent), is an agency under 5 U.S.C. § 7103(a)(3).

2. The American Federation of Government Employees, Local 3936, AFL-CIO (the Charging Party or the Union), is a labor organization under 5 U.S.C. § 7103(a)(4).

3. At all times material, the Charging Party has been the certified exclusive representative of a unit of employees (civilian technicians) appropriate for collective bargaining at the Respondent. In its role as the exclusive representative of the civilian technicians employed by the Charging Party, the Charging Party has negotiated a collective bargaining agreement covering the working conditions of bargaining unit employees. The Charging Party has also negotiated memorandums of agreement with the Respondent addressing the working conditions of bargaining unit employees

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as well as having filed grievances under its negotiated agreement on behalf of bargaining unit employees.

4. The charge in this proceeding was filed by the Charging Party with the Boston Regional Director of the Federal Labor Relations Authority (the Authority) on February 3, 1999, and a copy of the charge was served on the Respondent.

5. At all times material to this proceeding, the following named persons occupied positions set opposite their names with the Respondent:

General Emilio Diaz Colon - Adjutant General
Brigadier General Daniel López Romo - Assistant
Adjutant General Air Commander
Colonel Nelson Tejada - Base Wing Commander
Lt. Colonel Jose A. Goyco, Jr. - Personnel Officer
Captain Nestor Barreto - Maintenance Officer
Captain Manuel E. Castro Frias - Field Maintenance
Command/Commander, Aircraft
Generation Squadron

6. At all times material to this proceeding, the persons named in paragraph 5 were supervisors and/or management officials under 5 U.S.C. § 7103(a)(1) and/or (11).

7. At all times material to this proceeding, the persons named in paragraph 5 were acting on behalf of the Respondent.

8. On or about November 30, 1998, the Charging Party distributed a flyer to bargaining unit employees

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announcing its intention to conduct an informational picket line on December 8, 1998. According to the flyer, the purpose of the picketing was to protest the working conditions of the bargaining unit employees. The Union issued a press release prior to the picketing announcing its intent to picket regarding abuse of power, corruption, and immorality by managerial staff of the Air National Guard.

9. On December 6, 1998, at approximately 8:00 p.m., Brigadier General, Daniel Lopez Romo approached the Charging Party's President, Pedro Romero at the Base Community Club. López Romo told Mr. Romero not to engage in picketing on the access road leading to the Main Gate of the Respondent's premises. At the time of this discussion Mr. Romero was not on duty in either a civilian or military capacity since he had completed his military active duty for the weekend.

10. On the morning of December 8, 1998, Brigadier General Daniel López Romo called the Charging Party's President, Pedro Romero, on the telephone. During the telephone conversation, López Romo told Mr. Romero that any employees engaged in picketing should place a bag or a Halloween mask over their head.

11. On December 8, 1998, employees in the bargaining unit described in paragraph 3 engaged in informational picketing on behalf of the Charging Party. Participating on the picket line were the Charging Party's President, Pedro Romero, and the twenty-five (25) bargaining unit employees named in Appendix A.

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7

12. The Charging Party intended to conduct the

picketing on the public street at the entrance to the Main Gate at the Muñiz Air National Guard Base in Carolina, Puerto Rico. Commonwealth of Puerto Rico police were contacted by the Union prior to the picketing. The local police expressed safety concerns to the Union picketers and directed the picketers to a parking lot area off of an access road. Local Union President Romero informed the police regarding guidance he had gotten regarding the access road being construed as base property.

The police officer indicated that he would seek approval from PRANG officials to move the picketing to this parking lot. The police officer went inside the gate and returned, indicating he had received approval from PRANG officials to move the picketing to this parking area.

Indeed, the police officer returned with several orange cones furnished by PRANG officials to demarcate the permissible area of the picketing within 10 spaces of the parking lot. The picketing activities resumed in this space, which was approximately 800 feet from the Respondent's Main Gate.

13. The picketing took place after normal duty hours between 4:00 p.m. and 5:30 p.m.

14. The bargaining unit employees changed into civilian clothes before engaging in any picketing. Except for Pedro Romero, none of the other employees who engaged in picketing on December 8, 1998 were ever told by an supervisor

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or member of management that they could not engage in picketing, could not engage in picketing on agency's

premises or that they could not engage in picketing on the access road to the Respondent's Main Gate.

15. At all times, the picketing was conducted in an orderly manner. The picketing employees did not block or otherwise interfere with individuals entering or leaving the Muñiz Air National Guard Base in Carolina, Puerto Rico, and there was no interference with the Respondent's operations. No operations were being conducted on the base during the picketing.

16. At no time during the picketing on December 8, 1998 did any management representative or military personnel order any of the picketing employees to stop engaging in such conduct on the Respondent's property.

17. The purpose of engaging in the informational picketing was to improve working conditions of bargaining unit employees by informing the public, including the local press and electronic news media, of the hostile work environment created by Respondent. All of the bargaining unit employees knew, or were likely to know, of all of the actions taken by the Respondent in this case, based on the nature of the Respondent's conduct itself, and the reports in the local press, i.e. newspapers, radio, and television.

18. Bargaining unit employees engaged in picketing informed the public of the Charging Party's belief that the Respondent had unfairly terminated the Charging Party's vice

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president and a Union Steward. The Union employees believed these Union officials were unfairly terminated because of their filings of grievances, unfair labor practices, and

representation activities and because of their disclosures of fraud, waste, abuse and sexual harassment. The picketing activities occurred after the Union had exhausted all internal efforts to rectify problems addressed in the picketing. These two Union officials had been involuntarily retired from their military positions. As a result, they were no longer eligible for employment as civilian technicians in the National Guard since civilian technicians in the National Guard must be members of a military unit in order to be employed as civilian technicians in the Puerto Rico Air National Guard. The Union Vice president and the Union Steward were active on behalf of the Charging Party, and the Charging Party believed the decision requiring these two Union officials to retire was a result of their activity for and on behalf of the Charging Party. Although twenty-four (24) employees were required to retire from the military, the Union Vice President and the Union Steward were the only civilian technicians who were forced to retire involuntarily. The remaining civilian technicians had volunteered and were all eligible for an immediate pension as well as an "early out" bonus.

19. Bargaining unit employees on the picket line informed the public of the Charging Party's belief that the Respondent was engaging in immoral work practices which were

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10

typified by the fact that the Respondent allowed "hooters" girls into restricted areas, "mooning" incidents that had occurred on that base as recently as 1998, and the use of alcohol during duty hours.

20. Bargaining unit employees participated on the picket line to protest the Respondent's refusal to abide by negotiated agreements. This conduct was typified by the refusal of the Respondent to abide by the May 15, 1998 Decision and Order of the Federal Labor Relations Authority involving the repudiation of a Memorandum of Agreement (MOU) that had been negotiated with the Respondent involving an experimental compressed work schedule. The Respondent did not file any exceptions to the Decision and Order. Nevertheless, the Respondent refused to comply with the order in that proceeding, and the Authority has filed a petition for enforcement with the Federal Circuit Court of Appeals for the First Circuit.

21. On January 8, 1999 the Respondent, by Lt. Col. Jose A. Goyco, Jr., issued a letter to the President of the Charging Party, Pedro Romero, and the twenty-five (25) bargaining unit employees named in Appendix A, that, effective January 11, 1999 they would be placed on a non-duty pay status not to exceed March 31, 1999, because they engaged in informational picketing on December 8, 1998. Except for the Charging Party's President who is in the process of being terminated, this date was extended until April 30, 1999.

22. On January 8, 1999 the Respondent, by Captain

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11

Manuel E. Castro Frias, issued a letter to the President of the Charging Party, Pedro Romero, proposing his involuntary separation from the Puerto Rico National Guard because he engaged in informational picketing on December 8, 1998. On March 9, 1999 Romero was issued a letter discharging him

from the military because he allegedly violated a "lawful" order, made defamatory statements against members of the PRNG, and engaged in conduct "contrary to the good name...of the Puerto Rico National Guard," and on March 10, 1999, Romero was terminated from his civilian position because he lost his status in the military, effect April 13, 1999.

23. On January 8, 1999, the Respondent, by Colonel Nelson F. Tejada, issued memorandums to the President of the Charging Party, Pedro Romero, and the twenty-five (25) bargaining unit employees named in Appendix A, informing them that they had been temporarily placed on non-duty status and their Security Clearances suspended because they engaged in informational picketing on December 8, 1998. Local President Romero was the third consecutive Union president to be terminated from the Respondent. By virtue of Respondent's actions, Local Union officials were denied access to the Union office, files, and equipment.

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CONCLUSIONS OF LAW

The technicians in this case are civilian employees of the United States. 5 U.S.C. §§ 2105(a)(1)(F) and 7103(a)(2), and 32 U.S.C. § 709(d). As such, the employees have the right to form, join, or assist a labor organization (the Charging Party) without fear of penalty or reprisal under 5 U.S.C. § 7102 of the Statute. As interference with the exercise of those rights constitutes an unfair labor practice under 5 U.S.C. § 7116(a) of the Statute, the Authority has statutory jurisdiction under 5 U.S.C. § 7105(a)(2)(G) to resolve the unfair labor practice complaint in this case.

32 U.S.C. § 709(e), which prohibits further appeals from adjutant general decisions with respect to adverse personnel actions against civilian technicians, was held by the Authority in *Department of Defense, Illinois Air National Guard, 182nd Tactical Air Support Group, Peoria, Illinois*, 19 FLRA 101 (1985) to deprive the Authority of jurisdiction over an allegation that a technician was denied re-enlistment in the guard, thereby terminating his employment as a civilian technician, because he had engaged in activity protected by the Statute.

As urged by the General Counsel, I recommend that in this case, which implicates important First Amendment rights protected by the Statute, section 709(e) not be read to deprive the Authority of jurisdiction. See *Bollen v. National Guard Bureau*, 449 F. Supp. 343 (W.D., Pa., 1978) (termination

11b

of military and civilian employment was illegal and improper where undertaken to punish for exercising First Amendment rights); *Chaudoin v. Atkinson*, 494 F.2d 1323 (3rd Cir., 1974) (discharge of civilian technician for disobeying order to participate in military funeral was an abuse of discretion where order was unlawful); *Webster v. Doe*, 486 U.S. 592, 603 (1988) (Sole discretion of CIA director over employment termination decisions may not be read to exclude review of colorable constitutional claims arising out of an individual discharge); *Kostan v. Arizona National Guard*, 50 M.S.P.R. 182, 186 (1991) (Uncodified provision of the Technicians Act, Pub. L. No. 90-486 § 3(b), 82 Stat. 755, 757 (1968) demonstrates that technicians must be considered to possess all the rights held by other Army and Air Force civilian employees, save those rights specifically denied them in the National Guard Technicians Act).

Under section 19(b)(4) of Executive Order 11491, a ban on all picketing by Federal civilian employees, including informational picketing which did not interfere with an agency's operations, was held to be overly broad and an intrusion upon the right of free expression in violation of the First Amendment. *National Treasury Employees Union v. Fasser*, 428 F. Supp. 295 (D.C. 1976). As a result, Federal employees covered by the Statute, including those employed on military bases, now have a right under section 7102 of the Statute to conduct informational picketing concerning unit employees' conditions of employment which does

11c

not interfere with an agency's operations. *Department of the Army, U.S. Soldier Support Center, Fort Benjamin Harrison, Indiana, 40 FLRA 558 (1991); American Federation of Government Employees, Local 2369, AFL-CIO, 22 FLRA 63, 768-70 (1986); 5 U.S.C. § 7116(b)(7)*. The Authority has also held that the right to publicize matters affecting unit employees' terms and conditions of employment, while not unfettered, is a right protected by section 7102 of the Statute, and that the Air Force at Clark Air Force Base, the Philippines, by denying employees permission to distribute handbills concerning matters affecting unit employees conditions of employment, at the base exchange and commissary, where no disruption of the mission was shown, violated section 7116(a)(1) of the Statute. *Department of the Air Force, 3rd Combat Support Group, Clark Air Base, Republic of the Philippines, 29 FLRA 1044 (1987)*.

While military aspects of civilian technician employment do not concern conditions of employment within the meaning of the Statute, *Association of Civilian Technicians, Pennsylvania State Council, 47 FLRA 332 (1993)*, the informational picketing in this case concerned, in whole or in major part, the non-military aspects of the conditions of employment of the civilian technicians, addressing as it did alleged unfair terminations, immoral work practices, and the Respondent's refusal to abide by negotiated agreements.

Accordingly, the facts in this case support the following additional conclusions:

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24. The picketing that was conducted by the Charging Party on December 6, 1998, was lawful since it did not interfere with the Respondent's operations.

25. The sole basis for the actions taken by the Respondent against the twenty-five (25) employees named in Appendix A was that they engaged in lawful informational picketing.

26. The sole basis for the actions taken by the Respondent against the Charging Party's President, Pedro Romero, was his protected Union activity which included the picketing that took place on December 8, 1998, as well as the statements he made to the local press.

27. The order given to Pedro Romero by López Romo on December 6, 1998 was an unlawful order since it is well settled that a labor organization in the Federal Sector has a right to engage in lawful informational picketing on an agency's property. This right extends to the military, and is recognized by the Department of Defense in DoD 1400.25-M of Dec. 96, a regulation that applies to the National Guard Bureau. (G.C. Exh. 17).

28. By the conduct described above in paragraph 9, 10, 21, 22 and 23, the Respondent has created a hostile work environment that has resulted in an unprecedented decrease in dues paying Union members within a relative short period of time (from approximately 130 dues paying members to between 80 and 90 dues paying members) which has effectively destroyed the Charging Party's ability to provide representation to the

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civilian technicians that continue to be employed by the Respondent.

29. By the conduct described above in paragraph 9, 10, 21, 22, and 23, individually and collective, the Respondent has and continues to interfere with rights of the bargaining unit employees to engage in conduct protected by 5 U.S.C. § 7102, including the right to engage in lawful informational picketing and thereby committed unfair labor practices in violation of 5 U.S.C. § 7116(a) (1).

30. By the conduct described above in paragraph 10, the Respondent interfered with rights of bargaining unit employees to engage in conduct protected by 5 U.S.C. § 7102, including the right to engage in lawful informational picketing and thereby committed an unfair labor practice in violation of 5 U.S.C. § 7116(a) (1).

The unfair labor practices committed by the Respondent were so pervasive that extraordinary relief is warranted. Accordingly, I recommend that the Authority issue the following order.

ORDER

Pursuant to section 2423.41 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Puerto Rico Air National Guard, 158th Airlift Wing (AMC) Carolina, Puerto Rico, shall:

1. Cease and desist from:

(a) Interfering with the rights of employees represented by the Charging Party to engage in activity

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protected by the Federal Service Labor-Management Relations Statute by not allowing bargaining unit employees to engage in

lawful informational picketing on the access road to the Main Gate at the Muñiz Air Force Base.

(b) Interfering with the rights of employees represented by the Charging Party to engage in activity protected by the Statute by creating the impression that activity for and on behalf of the Charging Party will be kept under surveillance.

(c) Interfering with the rights of employees represented by the Charging Party to engage in activity protected by the Statute by making statements to employees that interfere with, restrain and coerce employees with regard to rights protected by the Statute, including the right to engage in lawful informational picketing on the Respondent's property.

(d) Interfering with the rights of employees represented by the Charging Party to engage in activity protected by the Statute by suspending with pay bargaining unit employees because they engaged in lawful informational picketing.

(e) Interfering with the rights of employees represented by the Charging Party to engage in activity protected by the Statute by suspending the security clearances of bargaining unit employees because they engaged in lawful informational picketing.

(f) Interfering with the rights of employees

EXECUTIVE COURT REPORTERS, INC.
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represented by the Charging Party to engage in activity protected by the Statute by requesting the investigation of the security clearances of bargaining unit employees because they engaged in lawful informational picketing.

(g) Interfering with the rights of employees represented by the Charging Party to engage in activity protected by the Federal Service Labor-Management Relations Statute by terminating the Charging Party's President, Pedro Romero, because he exercised his right under the Statute to engage in lawful informational picketing and to present the views of the Charging Party to the news media.

(h) Engaging in any further reprisal or effort to effect employees' condition of employment including retention based upon their having engaged in the lawful informational picketing.

(i) In any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed by the Federal Service Labor-Management Relations Statute.

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

(a) Advise all relevant higher officials involved in this matter that Pedro Romero and the bargaining unit employees named in Appendix A were engaged in lawful information picketing on behalf of the Charging Party on

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§ 7102; that all official records pertaining to this conduct by such employees shall so reflect or be changed to so reflect, and that any and all records which reflect that such activity constituted unfavorable activity, conduct, or behavior meriting adverse action toward such individuals shall be rescinded.

(b) Rescind its decision to suspend with pay Pedro Romero and the employees named in Appendix A.

(c) Rescind its decision to terminate Pedro Romero.

(d) Rescind its decision to suspend the security clearances of Pedro Romero and the employees named in Appendix A.

(e) Rescind its request that an investigation be undertaken to reexamine the security clearances of Pedro Romero and the employees named on Appendix A and immediately inform any individual or group of individuals investigating the security clearances of Pedro Romero and the employees named in Appendix A that the decision to request that investigation was based solely on unlawful considerations and should cease immediately.

(f) Consistent with the provisions of the Back Pay Act, make Pedro Romero and the employees named in Appendix A whole for any losses they may suffer as a result of the conduct found unlawful.

(g) Notify within ten (10) days of this order the

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16

Charging Party, Pedro Romero and the employees named in Appendix A that the action directed above has been taken.

(h) Post at the Muñiz Air Force Base and any other location where bargaining unit employees are located 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 Adjutant General of the Respondent 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.

(i) Within ten (10) days of posting the Notice, the Respondent will conduct a meeting of all civilian technicians in the bargaining unit represented by the Charging Party and at the meeting the Adjutant General will read to all employees present the Notice and inform each of the employees present that the Puerto Rico Air National Guard recognizes that the Federal Labor Relations Authority has jurisdiction over the Respondent and that conduct in conflict with the provisions of the Federal Service Labor-Management Statute will not be tolerated.

(J) 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 herewith.

Issued, San Juan, Puerto Rico, April 16, 1999.

17

Issued, Washington, DC, April 28, 1999.

GARVIN LEE OLIVER
Administrative Law Judge

APPENDIX A

1. ROLANDO NAVARRO
2. JUAN C. DIAZ
3. JAIME F. RIVERA COLON
4. ANGEL VAZQUEZ
5. ANGEL M. BERRIOS
6. VICTOR MERCED
7. PEDRO J. MARTINEZ
8. HECTOR VELEZ
9. GEORGE RODRIGUEZ
10. JOSE LEBRON
11. JOSE TORRES (M.I.D)
12. MARCOS SALDANA
13. AXEL RIVERA
14. ARLENE M. LUCIANO
15. EDGARDO ANTUNA
16. HECTOR APONTE ALICEA
17. LUIS M. RIVERA
18. FRANK GARCIA-ROSADO
19. CARLOS AYALA
20. MICHAEL COLL
21. CARLOS AYALA
22. RAFAEL HORTA
23. GEORGE ARCE
24. LUIS A. PABON
25. FELIX PEREZ

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Puerto Rico Air National Guard 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:

The Federal Service Labor-Management Relations Statute gives employees of the Puerto Rico Air National Guard the rights to:

form, join, or assist any labor organization;

act for a labor organization in the capacity of a representative;

present the views of the labor organization, as a representative of a labor organization, to heads of agencies and other officials of the executive branch of the Government, Congress or other appropriate authorities;

engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the Statute; and

refrain from any of the activities set forth above, freely and without fear of penalty or reprisal.

The Puerto Rico Air National Guard, Muñiz Air National Guard Base, Carolina, Puerto Rico, will not violate any of these rights. More specifically:

WE WILL NOT interfere with the rights of our employees to engage in activity protected by the Statute by informing the American Federation of Government Employees, Local 3936, AFL-CIO, the exclusive representative of our employees, not to conduct informational picketing on the access road to Muñiz Air National Guard Base.

WE WILL NOT, interfere with the protected rights of our employees by making statements which suggest that engaging in lawful informational picketing on behalf of the American Federation of Government Employees, Local 3936, AFL-CIO, may

have adverse repercussions or may cause an employee to be treated in a disparate manner.

WE WILL NOT, discriminate against employees by suspending their security clearances and their access to Muñiz Air National Guard Base, and placing them in a nonduty pay status because they engaged in lawful informational picketing on behalf of the American Federation of Government Employees, Local 3936, AFL-CIO.

WE WILL NOT, discriminate against Pedro Romero by issuing him a Proposed Notice of Removal, because he engaged in lawful informational picketing on behalf of the American Federation of Government Employees, Local 3936, AFL-CIO.

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 advise all relevant higher officials involved in this matter that Pedro Romero and other bargaining unit employees were engaged in lawful informational picketing on behalf of the American Federation of Government Employees, Local 3936, AFL-CIO, on December 8, 1998, conduct which is protected by 5 U.S.C. § 7102; that all official records pertaining to this conduct by such employees shall so reflect or be changed to so reflect; and that any and all records which reflect that such activity constituted unfavorable activity, conduct, or behavior meriting adverse action towards such individuals shall be rescinded.

WE WILL rescind the suspension of employees security clearances and the suspension of their access to Muñiz Air National Guard Base, and advise employees in writing that such action has been taken and that it will not be used against them in any way.

WE WILL rescind the Notice of Removal issued to Pedro Romero, and the suspension of his security clearance and access to Muñiz Air National Guard Base, and advise him in writing that such action has been taken and that it will not be used against him in any way.

(Respondent/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, Boston Regional Office, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA and whose telephone number is: (617)424-5731.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. BN-CA-90241, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Richard Zaiger, Esquire
Julie McCarthy, Esquire
Federal Labor Relations Authority
99 Summer Street, Suite 1500
Boston, MA 02110

P168-059-644

LTC David Carrion Baralt
Puerto Rico ANG
P.O. Box 9023786
San Juan, PR 00902

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Stuart Kirsch, Esquire
AFGE, Local 3936
6724 Church Street, Suite 2
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