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

MEMORANDUM DATE: September 18, 1996

TO: The Federal Labor Relations Authority

FROM: JESSE ETELSON
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE
BARKSDALE AIR FORCE BASE
BOSSIER CITY, LOUISIANA

Respondent

and Case No. DA-CA-50760

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1953

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
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U.S. DEPARTMENT OF THE AIR FORCE BARKSDALE AIR FORCE BASE BOSSIER CITY, LOUISIANA Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1953 Charging Party	Case No. DA-CA-50760

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 **OCTOBER 21, 1996**, and addressed to:

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

JESSE ETELSON
Administrative Law Judge

Dated: September 18, 1996
Washington, DC

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

U.S. DEPARTMENT OF THE AIR FORCE BARKSDALE AIR FORCE BASE BOSSIER CITY, LOUISIANA Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1953 Charging Party	Case No. DA-CA-50760

Phillip G. Tidmore, Esquire
Major James M. Peters, Esquire
For the Respondent

Julie Garnett Griffin, Esquire
John Flickinger, Esquire
For the General Counsel

Before: JESSE ETELSON
Administrative Law Judge

DECISION

The complaint issued by the Regional Director of the Federal Labor Relations Authority's Dallas Region alleges that Respondent committed an unfair labor practice in violation of section 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1). The conduct alleged to have constituted such violation was (1) a statement by Labor Relations Officer Larry D. Clayton to officers of the Charging Party (the Union) that memoranda of agreement addressing official time and the Union's use of FTS telephone service would be rescinded, if the Union did not apologize for writing certain letters to Respondent's Commanding Officer, and (2) a letter from Clayton informing the Union that Respondent was expanding the remedy it requested in a grievance it had filed over the letters to the Commanding Officer. The requested remedy, as expanded, would include a "[return] to

status quo" with respect to those memoranda of agreement on official time and telephone service.

A hearing was held in Shreveport, Louisiana. Counsel for the General Counsel and for Respondent filed post hearing briefs. The following findings are based on the record, the briefs, my observation of the witnesses, and my evaluation of the evidence.

Findings of Fact

Material Evidentiary Facts and Disputed Evidence

Respondent and the Union entered into a memorandum of agreement (MOA) authorizing the Union's President or its First Vice President, both of whom are bargaining unit employees, to use official time to conduct Union business for eight hours every Tuesday and Thursday, in addition to any other official time authorized by the parties' collective bargaining agreement. The parties also entered into an MOA permitting the Union to use Respondent's FTS-2000 telephone service for representational purposes, without cost, "in the spirit of partnership between the parties."

On June 14, 1995, the Union sent two letters to Respondent's Commanding Officer which, among other things, complained about certain alleged actions of Labor Relations Officer Clayton. On June 23, 1995, the Union sent a third letter to the Commanding Officer, seeking reconsideration of a denial of its request for 100% official time for one Union official. On July 7, 1995, Col. Randy B. Lauterbach, signing as "Commander," sent the Union a letter, constituting a formal employer grievance pursuant to the parties' collective bargaining agreement, over the three Union letters. The grievance letter alleged that the Union's letters contained "libelous, discriminatory, false and malicious allegations and statements against the Installation Commander's designee to conduct labor-management business, Mr. Larry D. Clayton . . . ." The final paragraph of the grievance letter follows:

> The remedy for these violations must be a written apology, signed by the President and 1st Vice President of NFFE, Local 1953, to the Labor Relations Officer, the Civilian Personnel Office and the Installation Commander for the egregious misconduct by the senior union officials in their representational responsibilities. The written apology must be posted on all bulletin boards for

a period of 30 days.

On July 7, the same day the grievance was delivered to the Union, Union President Tom Ray sent a formal reply to "Commanding Officer, Barksdale Air Force Base," in which he "denied" the grievance. What occurred next is in dispute.

Ray and Union First Vice President Chris Rogers testified that, toward the end of July, Clayton went to the Union's office and, in the presence of Ray and Rogers, suggested that the Union issue a letter of apology to settle Respondent's grievance. According to both Ray and Rogers, Ray answered by refusing that suggestion. According to Ray, Clayton's reply to his refusal was that, "If you do not do this, I am going to take away Chris Rogers' official time, and I am going to take away your telephone." Rogers, on the other hand, testified that Clayton's reply was to state that he was going to "expand his . . . requested remedy to settle it to include rescinding Chris' official time, which he was talking about mine, and use of the FTS telephone." Clayton's version of this incident was that it simply did not occur--that he never went to the Union office for such purpose and that no conversation on this subject took place.

The final episode in this minisaga is not in dispute. Clayton sent the Union a letter, dated August 1, 1995, notifying it that the grievance was being referred for arbitration and invoking the contractual procedures for selecting an arbitrator. Addressing the Union's July 7 reply to the grievance, Clayton's letter states:

> The reply, which stated the union will no longer be involved with the Barksdale Partnership Council, expands the issue to include the Union effectively negating the Partnership Agreement that the Employer negotiated in good faith; and therefore, it expands the requested remedy to include rendering all agreements that were negotiated in good faith based on partnership to be returned to status quo; to wit, the [MOA] dated 23 November 1994 granting official time of 8 hours on Tuesdays and Thursdays, and the [MOA] dated 7 April 1995 granting the Union's use of FTS-2000 telephone service.

Resolution of Disputed Material Evidence

Rogers' version of Clayton's alleged statements in the Union office presents, in effect, the same message Clayton put in his August 1 letter regarding the remedy being requested in Respondent's grievance. Thus, while both

Rogers' version of the alleged conversation and the text of Clayton's letter suffer somewhat in the precision of the language used, the consistent theme is that Clayton sought, through the grievance procedure, to rescind the granting of some official time and of FTS telephone service. The August 1 letter thus implemented the action that, according to Rogers, Clayton had stated he intended to take. More specifically, it purports to place that remedial request before the arbitrator.

If Clayton had stated in the Union office that he was going to act unilaterally to take away Rogers' official time and the telephone, I believe that Rogers would have so testified. Nor, viewing the record as a whole, does the statement Ray attributed to Clayton necessarily mean that he threatened to take such action unilaterally. In any event I find that he did not. Therefore it is immaterial whether Rogers or Clayton is to be believed with respect to whether the meeting occurred at all. Rather, the issue is whether the message conveyed in the August 1 letter, which may or may not have confirmed a previous statement of intention, was coercive within the meaning of section 7116(a)(1) of the Statute.

Analysis and Conclusion

Counsel for the General Counsel characterizes the August 1 letter, as well as the statements attributed to Clayton by Ray and Rogers, as threats to rescind the MOAs concerning official time and FTS service. However, I have found no threat to do more than to use the grievance procedure to attempt to effect that result. The General Counsel has cited no example, and I have been unable to find any, where an agency's threat to use a negotiated grievance procedure has been found to interfere with employee rights. Nor, at least absent a pattern of malicious and groundless invocation of such tactics, is such a finding self-evident. And here, no one has disputed Respondent's right under the collective bargaining agreement to seek the "threatened" relief pursuant to the negotiated grievance procedure.

An employer's threat to file a civil lawsuit against a union presents the potential for more serious consequences than the threat of using the grievance procedure, and might be expected to have a greater tendency to coerce or intimidate employees in the exercise of their statutory rights. In *Clyde Taylor Company,* 127 NLRB 103 (1960), the National Labor Relations Board held that the threat of a libel action against employees who had filed an unfair labor practice charge, unless they withdrew their charge, restrained employees in the exercise of the right to file

charges. However, the Authority has specifically disavowed *Clyde Taylor* as not reflecting "an objective application of the Federal sector test." *Department of Treasury, Internal Revenue Service, Louisville District*, 20 FLRA 660, 665, 677-78 (1985) (*IRS Louisville*), *review denied sub nom National Treasury Employees Union v. FLRA*, 801 F.2d 1436 (D.C. Cir. 1986) (table). *See also U.S. Department of the Army, U.S. Army Aviation Center and Fort Rucker, Fort Rucker, Alabama*, 46 FLRA 535, 545 (1992) (analyzing the Authority's disagreement with Judge Arrigo's *Clyde Taylor*-based finding of a violation of section 7116(a)(1) in *IRS Louisville*).

As in the instant case, the threatened action in *IRS Louisville* was based on the alleged falsity of statements made by the union. If the Authority will not find the threat of a libel action to have the coercive tendency to establish a violation of section 7116(a)(1), it seems highly improbable that it would find the necessary coercive tendency here. Accordingly, I recommend that the Authority issue the following order.

ORDER

The complaint is dismissed.

Issued, Washington, DC, September 18, 1996

JESSE ETELSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by JESSE ETELSON, Administrative Law Judge, in Case No. DA-CA-50760 were sent to the following parties in the manner indicated:

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Dated: September 18, 1996
Washington, DC