

BUREAU OF INDIAN AFFAIRS ISLETA ELEMENTARY SCHOOL, PUEBLO OF ISLETA, NEW MEXICO  Respondent	
and  INDIAN EDUCATORS FEDERATION  Charging Party	Case Nos. DE-CA-50006 DE-CA-50324 DE-CA-50420

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 **JANUARY 16, 1996**, 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: December 14, 1995  
Washington, DC

MEMORANDUM

DATE: December 14, 1995

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER  
Administrative Law Judge

SUBJECT: BUREAU OF INDIAN AFFAIRS  
ISLETA ELEMENTARY SCHOOL,  
PUEBLO OF ISLETA, NEW MEXICO

	Respondent	
	and	Case Nos. DE-
CA-50006		DE-
CA-50324		DE-
INDIAN EDUCATORS FEDERATION		DE-
CA-50420		
	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

BUREAU OF INDIAN AFFAIRS ISLETA ELEMENTARY SCHOOL, PUEBLO OF ISLETA, NEW MEXICO  Respondent	
and  INDIAN EDUCATORS FEDERATION  Charging Party	Case Nos. DE-CA-50006 DE-CA-50324 DE-CA-50420

Arthur Arguedas  
Counsel for the Respondent

Patrick Baxtrom  
Representative of the Charging Party

Steven B. Thoren  
Matthew Jarvinen  
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER  
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent<sup>1</sup> violated section 7116(a)(1) of the Federal

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Counsel for the Bureau of Indian Affairs (BIA) asserts that the caption identifies three entirely distinct entities: the BIA, the Isleta Elementary School, and the Pueblo of Isleta. It is apparent from the record that the caption identifies the BIA as the Respondent as well as the location of its alleged unfair labor practice, namely the Isleta Elementary School on the Pueblo of Isleta, where the School's principal was acting on behalf of BIA and where bargaining unit employees were located. Accordingly, as used herein, Respondent refers to the BIA.

Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1), when the Respondent, on or about August 29, 1994, effectively solicited and obtained from the Governor of the Pueblo of Isleta a ban against Union Representative Dennis Ziemer entering the Pueblo of Isleta and, thus, carrying on representational activities (Case No. DE-CA-50006); and subsequently enforced the ban against Ziemer on or about January 11, 1995 (Case No. DE-CA-50324); and enforced the ban against members of the bargaining unit on or about March 22, 1995 (Case No. DE-CA-50420).

By Answer dated August 10, 1995, the BIA denied the violations of law alleged in the Complaint. The BIA asserted, among other things, that it was not responsible for the actions of a sovereign Indian Pueblo, the Pueblo of Isleta, and had no power to lift any such ban that might exist as a result of actions by the Pueblo. BIA contends that Mr. Ziemer got himself banned from the Pueblo by repeated obnoxious, intentional, and confrontational behavior that offended an ancient culture.

For the reasons set out below, a preponderance of the evidence establishes the alleged unfair labor practices.

A hearing was held in Albuquerque, New Mexico. The BIA and the General Counsel were represented by counsel and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs.<sup>2</sup> Based on the

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Counsel for the General Counsel moved to strike the BIA's brief or, in the alternative, portions thereof. The motion to strike the brief is denied, no prejudice having been shown by the manner of BIA's initial timely service of its brief. The motion to strike references to the Office of the General Counsel's comments in the FLRA Quarterly Summary and to an arbitration decision is also denied; however, opinions of the General Counsel and awards of arbitrators are not binding on the Authority in the adjudication of unfair labor practices.

entire record<sup>3</sup>, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

### Findings of Fact

The BIA is an agency under section 7103(a)(4) of the Statute. It provides comprehensive education programs and services for Indian and Alaska natives.

The Indian Educators Federation (IEF), Local 4524, affiliated with the American Federation of Teachers (AFT) and the AFL-CIO, is the exclusive representative of a bargaining unit of professional employees in the Navajo and Albuquerque Areas of the BIA, and a bargaining unit of nonprofessional employees in the Albuquerque Area of the BIA. IEF has represented the professional bargaining unit since the early 1970's and the nonprofessional bargaining unit since February 1995.

Both of these bargaining units include employees at the Isleta Elementary School, a BIA-operated school, located on the Indian reservation, the Pueblo of Isleta, in New Mexico. The Isleta Elementary School primarily serves children of the Pueblo of Isleta tribe. At all relevant times, Michael Schoenfeld was the principal of Isleta Elementary School, acting on behalf of the BIA.

The Pueblo of Isleta reservation covers about 211,000 acres with a population of approximately 4500. It is generally open to the public, but is sometimes closed to the public for religious purposes. The Federal Government operates within a government-to-government relationship with federally recognized Native American tribes, such as the Pueblo of Isleta.

Dennis Ziemer was a full-time employee of the American Federation of Teachers assigned to the IEF as a Field Representative. The relationship between Dennis Ziemer and several of the school principals in the BIA, including Dr. Schoenfeld, was strained due to comments Mr. Ziemer had made in his newsletter and due to his Union tactics, which were viewed as more aggressive than those of other union officials with whom local BIA management had dealt. Dr. Benjamin Atencio, the Superintendent of Education for the BIA's Southern Pueblo Agency, which includes the Isleta

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Counsel for the General Counsel's motion to correct the transcript is granted; the transcript is corrected as set forth therein.

Elementary School, had filed a number of grievances against Mr. Ziemer.

In the Summer of 1994, the Union had two significant issues before it. The first issue was an organizing drive to organize a nonprofessional bargaining unit in the BIA Albuquerque Area, including the Isleta Elementary School. The organizing campaign was to include Mr. Ziemer meeting with the nonprofessional employees at the Isleta school on August 30, 1994 to advise them about the Union and seek to have them sign Union authorization cards. The other significant issue involved an alleged failure at several schools to assign employees adequate breaks. At the direction of the IEF Executive Board, Mr. Ziemer sent a letter on about August 22, 1994 to all IEF Executive Board Officers and Stewards, as well as BIA principals, including Dr. Schoenfeld, concerning the breaks issue, explaining that the Executive Board had instructed him "to file a mass grievance against every school or supervisor that failed to provide an adequate rest period."

On August 23, 1994, Mr. Ziemer met with Dr. Schoenfeld. Dr. Schoenfeld had requested the meeting to resolve his concerns about feeling intimidated by Mr. Ziemer at a Union meeting at the school the previous Spring over the breaks issue and to try to resolve concerns about potential confrontations that he felt were developing. Dr. Schoenfeld felt that Mr. Ziemer had backed him into a corner at the Spring meeting by trying to get him to make a decision about breaks in front of the staff. Also, after the Spring meeting, Dr. Schoenfeld was taken off of the Union's list of the top ten administrators and placed on the Union's "most wanted" list.

At the August 23, 1994, meeting, Dr. Schoenfeld and Mr. Ziemer discussed the previous meeting, the breaks issue, and mention was made of the Union meeting scheduled at the Isleta school for the next week. Near the conclusion of the meeting, Mr. Ziemer gave Dr. Schoenfeld what he considered a "joke card," as follows, which he had received as a gift from one of the Union members:

Mr. Ziemer thought that the business card was amusing and that Dr. Schoenfeld would also find it amusing.

Dr. Schoenfeld maintained a "poker-face," but was not amused. He felt intimidated by the attitude that the card reflected, realizing that Mr. Ziemer would be coming to the school again soon and that his meeting to develop a more non-confrontational relationship with the Union representative had apparently been unsuccessful.

After the meeting, Dr. Schoenfeld furnished a copy of the business card to Richard Garcia, BIA labor relations specialist for the Albuquerque area, who sent it to the BIA central office in Washington, D.C.

Later in the week, Dr. Schoenfeld was advised that a former Union representative had been physically escorted off the reservation, possibly as a result of formal Tribal action. Dr. Schoenfeld decided to meet with the Governor of the Pueblo of Isleta to determine whether he was unknowingly violating any past Tribal actions by allowing a Union representative to visit the school.

The Pueblo takes the position that as a sovereign it can ban anyone from entering the reservation. However, Article 6, Union Rights & Responsibilities, of the applicable collective bargaining agreement provides:

Section 5. Designated Union Representatives not employed by the local school who are on official representational business may visit school locations with advance notice. The Union Representative will check in with the Principal and state the purpose of the visit. Normally, this does not include meeting with members of the student body.

On August 29, 1994, Dr. Schoenfeld met with Alvino Lucero, Governor of the Isleta Pueblo.<sup>4</sup> The relationship between the BIA and the Isleta Pueblo is an ongoing, close relationship. Dr. Schoenfeld meets with Governor Lucero about once a month or when necessary to inform him about activities and conditions at the school. The Governor expects to be notified of any significant issues involving the school.

Dr. Schoenfeld asked about a previous ban on the Union or Union representatives by the Tribe.<sup>5</sup> Dr. Schoenfeld also described his concerns that the Union had held a meeting without his knowledge and may be harassing non-members when

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The account of the meeting between Dr. Schoenfeld and Governor Lucero which follows is a composite made from the deposition of Governor Lucero and a stipulation of anticipated testimony of Dr. Schoenfeld. The deposition and stipulation were prepared by agreement of the parties and submitted for the record. Neither Dr. Schoenfeld nor Governor Lucero testified at the hearing.

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Governor Lucero was unable to locate an official record of any previous ban of a Union representative by the Pueblo. He believed that such a ban was in effect in 1987-1988. BIA labor relations specialist Garcia testified that the Pueblo had banned the previous Union representative, Elmer Jackson, but acknowledged that he had been unable to verify this through the Governor's office. It is noted that BIA, Washington, D.C. was found to have committed various unfair labor practices in 1987-1988, including interfering in the bargaining relationship between the Union and local activities by directing its local activities to refuse to recognize and allow nonemployee Union representative Elmer Jackson access to unit employees at BIA schools in the Albuquerque and Gallup areas. See United States Department of Interior, Washington, D.C. and United States Department of Interior, Bureau of Indian Affairs, Washington, D.C. et al, 89 ALJ Decision Reports, Case Nos. 6-CA-80028, 6-CA-80064, 6-CA-80123, 6-CA-90122, 6-CA-90275, 6-CA-90266 (May 8, 1990).



some of the staff didn't want anything to do with the

Union.<sup>6</sup> Later, Dr. Schoenfeld gave the Governor the novelty business card of Mr. Ziemer and also provided the Governor with the August 22, 1994 letter from Mr. Ziemer concerning the Union's threat of a mass grievance. There is no evidence that Dr. Schoenfeld asked Governor Lucero to take any specific action, and both denied that any such request was made.

After receiving this information from Dr. Schoenfeld, Governor Lucero faxed a letter to Dr. Atencio, BIA Superintendent of Education, Southern Pueblo Agency, for Dr. Schoenfeld. The letter, dated August 29, 1994 and addressed to Dr. Schoenfeld, provided as follows:

I have been informed that the IEF Executive Board has given instruction to a Dennis Ziemer to file a mass grievance against the schools.

My instruction to you, as principal of the Isleta Elementary School is that Dennis Ziemer not be allowed to step foot on the Isleta Pueblo reservation, unless he wants to be arrested for trespassing.

You will receive further instruction from me in the very near future as to how we will deal with this situation.

Mr. Ziemer had previously arranged for the meeting at the Isleta school on August 30, 1994 through the Steward at the school, Carmen King, who had notified Dr. Schoenfeld. As noted, the purpose of the meeting was to meet with the nonprofessional employees the Union was attempting to organize and with the teachers the Union already represented, to discuss with them the breaks issue and pending grievances.

The morning of August 30, 1994, Mr. Ziemer received a telephone call from Richard Garcia, BIA labor relations specialist, who told Mr. Ziemer that he was not allowed to go to the school based on a letter that Dr. Atencio had received from Governor Lucero.

Mr. Ziemer did not hold the meeting with unit employees at the Isleta school scheduled for August 30. Instead, he and Steward King arranged for the meeting to be held off of the reservation.

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There is no evidence in the record of the Union holding meetings without Dr. Schoenfeld's knowledge or of the Union harassing non-members.

At Mr. Garcia's suggestion, Mr. Ziemer met with Governor Lucero in his office on September 2, 1994. Mr. Ziemer was not warmly received. The Governor held up Mr. Ziemer's August 22, 1994 letter concerning the possible mass grievance and said, "This will not be tolerated." He also held up Mr. Ziemer's novelty card and stated, "This kind of thing will not be tolerated."<sup>7</sup> Mr. Ziemer's effort to explain his position was interrupted by the Governor who said Ziemer should meet with the school board to resolve the matter. Mr. Ziemer then went to Dr. Schoenfeld's office and asked to be placed on the school board's agenda.

The Union attempted to hold another meeting with unit employees at the Isleta school later in September, 1994. The Union membership at the school had requested a meeting, so Mr. Ziemer asked Ms. King to check with Dr. Schoenfeld to see whether he could meet with the professionals at the school on September 29, 1994.

By memorandum of September 29, 1994, Dr. Atencio advised Dr. Schoenfeld as follows concerning the requested meeting:

Upon your communication with me on September 26, 1994, regarding discussion/flyer from the school IEF Steward on a union presentation on orientation from Mr. Ziemer, I called the Governor of the Pueblo of Isleta to see if the August 29, 1994 letter was still in effect. The letter provided instructions that Dennis Ziemer not be allowed to step foot on the Isleta Pueblo reservation, unless he wants to be arrested for trespassing.

I discussed this matter with Governor Lucero on September 29, 1994. He stated that the letter was still in effect.

Secondly, I asked him about the meeting he had with Dennis Ziemer and that he asked [for] a meeting with the Isleta Elementary School Board of

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Governor Lucero testified that he was offended by the card and felt that a professional should not present this type of card to a school principal. BIA labor relations specialist Richard Garcia, who takes part in tribal religious affairs, explained that the card could be considered religiously offensive because a Native American religious symbol is combined with a profanity.

Education. He stated that Mr. Ziemer was also not to meet with the School Board.

Apparently, the Tribal Council had met on matters related to the IEF field representatives or union matters before. The Governor wanted to look into the matter further.

You are instructed to comply with Governor's Lucero's instructions until this office is notified otherwise. Please inform the school IEF Steward that Mr. Ziemer can not enter tribal land thus, can not enter school grounds. Secondly, inform the School Board and advise them that Mr. Ziemer is not to meet with them.

Dr. Schoenfeld advised Steward King that the request for a meeting was disapproved, and Mr. Ziemer would be arrested if he entered the school grounds. As a result, the meeting was again held off of the reservation.

On December 20, 1994, Mr. Ziemer met with Governor Lucero, Superintendent Atencio, IEF President Patrick Baxtrom and others concerning the ban. Governor Lucero stated that he would discuss the status of the ban with the Tribal Council, but the accepted protocol was for outsiders to notify or check in with the Governor's office whenever they were attending a meeting or coming on to the Pueblo. Mr. Ziemer agreed to give them such notice.<sup>8</sup> (Tr. 48-49; 143-145).

On January 4, 1995, Steward King notified Dr. Schoenfeld, at Mr. Ziemer's request, that the Union wanted to hold a meeting at the school at 4 p.m. on January 11,

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The record does not reflect that it was made clear by the Governor, and agreed by Mr. Ziemer, that such a notice or check in had to be given in person and that permission had to be expressly granted following such notice or check in. I find that how the notice was to be given was left vague, was not clearly perceived or perceptible from the conversation at the meeting, and that Mr. Ziemer could have reasonably believed that telephone notice to the Governor's office was acceptable notice. A later, January 11, 1995, letter from the Governor to Dr. Schoenfeld states that the protocol for conducting any business on the reservation by off-reservation personnel is that the firms or individuals "must first seek permission to conduct such business and meetings." There is no evidence that this letter was sent to the Union. A January 12, 1995 letter to IEF President Baxtrom merely refers to the protocol discussed with Mr. Ziemer at the December 20, 1994 meeting.

1995.<sup>9</sup> At about the same time, Mr. Ziemer gave the Governor's office notice of his intention to hold the January 11 meeting at the school by leaving a detailed message about the meeting with the Governor's secretary.

On January 11, 1995, Mr. Ziemer arrived at the Isleta school a few minutes before 4:00 p.m. In accordance with the parties' collective bargaining agreement, Mr. Ziemer went by the administrator's office to check in when he arrived at the school. Mr. Ziemer did not find anyone in the office, but found a staff meeting being conducted by Dr. Schoenfeld in the school library. The staff meeting ended a minute or two later, and Mr. Ziemer invited Dr. Schoenfeld to stay for the Union meeting, which he did.

The meeting got underway with comments by Mr. Ziemer and questions from the employees. Shortly thereafter, an employee entered, handed Dr. Schoenfeld a letter, and said that the police were on their way. The employees asked Dr. Schoenfeld to read the letter to them, and Mr. Ziemer told him to go ahead.

Dr. Schoenfeld proceeded to read the letter, addressed to Dr. Schoenfeld from Governor Lucero. The letter, dated January 11, 1995, referred to alleged unannounced visits to the school by Mr. Ziemer that had caused disruption within the school staff. The letter announced that the Tribal Council had upheld the decision of the Governor to banish Mr. Ziemer from the Isleta Reservation. The letter concluded that while school staff were not being deprived of joining the Union, "all activities with regard to membership meetings will not be allowed at the Isleta Elementary School or Isleta Reservation."

Shortly thereafter, an Isleta Pueblo Tribal Police officer arrived. Mr. Ziemer was prevented from continuing the Union meeting and was escorted off of the Isleta Pueblo by the police. Dr. Schoenfeld advised Mr. Ziemer that this was not his doing, but that he was acting according to the instructions of the BIA to follow the Tribe's orders.

The next day, January 12, 1995, Governor Lucero sent a letter to Patrick Baxtrom, the President of the IEF. In this letter, the Governor protested the actions of Mr. Ziemer at the school the previous day. He also informed Mr. Baxtrom that the Tribal Council, on January 10, 1995, supported the directive to deny Mr. Ziemer access to the Pueblo. The Governor claimed that Mr. Ziemer had failed to

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Union meetings were scheduled for 4 p.m., after the work day ends at 3:45 p.m.

follow proper protocol and also that Mr. Ziemer had been advised on December 20, 1994 that all visits were to be suspended until the issues were resolved. The Governor also sent this letter to Dr. Atencio by facsimile.

The Union attempted to hold another meeting with unit employees at the school in March, 1995. Based on Governor Lucero's January 12, 1995 letter, Mr. Baxtrom, IEF President and an employee of the BIA, concluded that the ban applied only to Mr. Ziemer and that another Union representative could meet with members and the new nonprofessional unit employees at the school without problems. Mr. Baxtrom instructed Mr. Ziemer to set up a meeting for Mr. Baxtrom at the Isleta school.

At Mr. Ziemer's request, Ms. King informed unit employees and Dr. Schoenfeld that a meeting would be held at 4:00 p.m. on March 22, 1995 at the school, that Mr. Baxtrom and Marie Baca, a Union Vice-President, would be attending, but that Mr. Ziemer would not be at the meeting.

Mr. Ziemer telephoned the Governor's office to provide notice of the meeting. He also informed the Lieutenant Governor that he would not be attending the meeting.

Mr. Baxtrom and Ms. Baca arrived shortly after 4:00 p.m. for their scheduled meeting at the Isleta school with unit employees on March 22, 1995. Mr. Baxtrom had driven some 290 miles for the meeting. They were met outside of the school by some bargaining unit employees and informed that the tribal police were inside the school and they probably weren't going to allow the meeting. As Mr. Baxtrom approached the building, he was met by two Tribal police officers, who asked if he was there to conduct a Union meeting. When he responded affirmatively, the police told him that Dennis Ziemer was banned. Mr. Baxtrom then identified himself, and the police asked him to wait while they checked further. When the police returned a few minutes later, they showed Mr. Baxtrom a typed letter addressed to Mr. Ziemer, with Mr. Baxtrom's name handwritten in next to Mr. Ziemer's name.

The letter, from Governor Lucero, dated March 20, 1995, acknowledged that the Tribe had notice that a meeting had been scheduled by the Union for March 22, 1995. The Governor referred to his August 29, 1994 letter to Dr. Schoenfeld banning Mr. Ziemer from entering the Isleta Pueblo reservation and the Tribal Council action in support of this action. The Governor concluded by stating:

Should you disregard this notice and/or make your presence known, Mr. Schoenfield (sic) has been directed to contact the Isleta Police Department and have you removed immediately. Further legal action may be taken against you, should you come onto the reservation.

According to the letter, copies were sent to Dr. Atencio, Dr. Schoenfeld, and the Isleta Police Department.

Mr. Baxtrom and Ms. Baca, members of the Union's bargaining unit, were prevented from meeting with members of the bargaining unit at the Isleta Elementary School and escorted off of the Isleta Pueblo by officers of the Isleta Pueblo Tribal Police.

Since he was unable to meet with employees at the school that day, other than those waiting outside the school when he arrived, Mr. Baxtrom scheduled a meeting with Governor Lucero, but the meeting was subsequently cancelled by the Governor. Mr. Baxtrom attempted to reschedule the meeting, but never heard back from the Governor.

As of the date of the hearing, the Union has not been able to hold any additional meetings with unit employees at the Isleta school. Mr. Ziemer has not been able to go to the school since his January 11, 1995 attempt to hold a meeting with unit employees. He believed that, based on the actions of the BIA and the Tribe, the ban on him would be enforced if he attempted to return to the school. The only Union officer at the school, Carmen King, resigned as Union steward in June 1995.

#### Discussion and Conclusions

In U.S. Air Force Logistics Command, Tinker Air Force Base, Oklahoma City, Oklahoma, 32 FLRA 252 (1988), the Authority stated, 32 FLRA at 253-54:

Section 7102 of the Statute provides, in part,  
that each employee shall have the right to assist any labor organization, freely and without fear of penalty or reprisal, and that each employee shall be protected in the exercise of that right. Thus, union activity engaged in by employees is protected from interference by agency employers. This right prevents an agency from denying a union representative access to agency premises, unless that denial is warranted. See, for example, Army and Air Force Exchange Service (AAFES), Lowry AFB Exchange, Lowry AFB, Colorado, 13 FLRA 310, 311 (1983); Philadelphia Naval Shipyard, 4 FLRA 255,

266 (1980). In order to lose the protection of the Statute, an employee must engage in improprieties which constitute flagrant misconduct or otherwise exceed the boundaries of protected activity. See, for example, United States Forces Korea/Eighth United States Army, 17 FLRA 718 (1985).

See also United States Department of Interior, Washington, D.C. and United States Department of Interior, Bureau of Indian Affairs, Washington, D.C. et al, Case Nos. 6-CA-80028, 6-CA-80064, 6-CA-80123, 6-CA-90122, 6-CA-90275, 6-CA-90266 at 30-31 (March 19, 1990), ALJ Decision Reports, No. 89 (May 17, 1990) (BIA, Washington, D.C. violated section 7116 (a)(1) and (5) by interfering in the bargaining relationship between the Union and BIA area offices by directing its local activities to refuse to recognize and allow nonemployee Union representatives access to unit employees at BIA schools in the Albuquerque and Gallup areas.)

Access to agency facilities for union designated representatives and personnel directly affects a union's ability to carry out its representational responsibilities and therefore is inextricably tied to the conditions of employment of unit employees. American Federation of Government Employees, AFL-CIO, National Council of SSA Field Operations Locals and Social Security Administration, 25 FLRA 622, 625 (1987). In the present case, the Union had established a right of access to school locations for nonemployee Union representatives through Article 6, Section 5 of the Joint Negotiated Agreement and by the past practice of allowing nonemployee Union representatives, including Mr. Ziemer, access to the Isleta Elementary School. There is no evidence that Mr. Ziemer failed to comply with the previously established and mutually agreed upon contractual procedures for conducting official representational business at the Isleta school. The Union also complied with the requirements of the Pueblo of Isleta as discussed at the December 20, 1994 meeting with the Governor.<sup>10</sup>

The record reflects that the ban was imposed by a third party, the Pueblo of Isleta. However, the Authority has held that an agency's extent of control of, or influence on,

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As noted, it appears from the January 11, 1995 letter from Governor Lucero to Mr. Schoenfeld that unions must first seek permission to conduct business on the reservation. There is no evidence that this specific requirement was provided to the Union, and there is no mention of this requirement in the collective bargaining agreement.



a third party's control of property, if any, is a relevant consideration in determining an agency's own liability for an unfair labor practice relating to the use of such property. Department of Health and Human Services, Health Care Financing Administration, 24 FLRA 672,676 (1986), petition for review denied sub nom. American Federation of Government Employees, AFL-CIO v. Federal Labor Relations Authority, 840 F.2d 947 (D.C. Cir., 1988).

I agree with Counsel for the General Counsel that the Respondent violated section 7116 (a)(1) when Principal Schoenfeld, on or about August 29, 1994, interfered with the Union's right to access to the School by effectively soliciting the action that Governor Lucero took on August 29, 1994, to ban Union representative Ziemer from the Pueblo of Isleta and the Isleta Elementary School.

Although Mr. Schoenfeld did not make a direct request that Governor Lucero take such action, I conclude that his report to the Governor effectively solicited and influenced the Governor's action and was intended to have this result. The record reflects that the Principal and the Governor have an ongoing, close official relationship. The record reflects that Dr. Schoenfeld was bothered and upset with Mr. Ziemer's representational activities since at least the Spring of 1994. Dr. Schoenfeld became even more upset with Mr. Ziemer after the August 23, 1994 meeting. The business card further revealed Mr. Ziemer's aggressive attitude, and Dr. Schoenfeld believed that his efforts to develop a more non-confrontational relationship with the Union representative had been unsuccessful. He felt intimidated, realizing that Mr. Ziemer would be coming to the school again the following week to attempt to organize nonprofessional employees and to discuss the breaks issue with unit employees.

With all of this in mind, Dr. Schoenfeld made the fortuitous discovery that the Union may have been banned from the Pueblo by a previous Tribal Council and went to see Governor Lucero on August 29, 1994 to determine whether any such ban would apply to Mr. Ziemer. Dr. Schoenfeld also made the Governor aware of his problems with the Union representative -- the "offensive" business card, the threat of a mass grievance, alleged unscheduled meetings with unit employees, and alleged harassment of nonmembers.

Dr. Schoenfeld could not deny Mr. Ziemer access to the premises himself because the record does not establish that Mr. Ziemer violated the contractual provisions for access or engaged in improprieties which constituted flagrant misconduct or otherwise exceeded the boundaries of protected

representational activity under the Statute. The Union clearly had a right to file a mass grievance. See 5 U.S.C. §§ 7114, 7121(b)(3)(A). The "offensive" business card did not constitute flagrant misconduct. See Department of the Air Force, Grissom Air Force Base, Indiana, 51 FLRA 7, 11-13 (1995). The other alleged problems cited by Dr. Schoenfeld to the Governor, alleged unscheduled meetings and harassment of nonmembers, have no support in the record. I conclude from Dr. Schoenfeld's actions that he was clearly suggesting and soliciting that the Governor take action to ban Mr. Ziemer from the Pueblo and the Isleta Elementary School. The Governor received the intended message and took the desired action the same day.

As a direct result of this action by Mr. Schoenfeld, Mr. Ziemer and other officers of the Union have been precluded from carrying on Union representational activities at the School since August 29, 1994. As a result of Respondent's solicitation of, and compliance with, the ban, Mr. Ziemer, a nonemployee Union representative, was prevented from meeting with bargaining unit members in September 1994 and on January 11, 1995, and IEF President Patrick Baxtrom and IEF Vice President Marie Baca, unit employees, were prevented from meeting with members of the bargaining unit on March 22, 1995. By this conduct, Respondent committed unfair labor practices in violation of section 7116(a)(1) of the Statute, as alleged.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

#### 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 Bureau of Indian Affairs, Isleta Elementary School shall:

1. Cease and desist from:

a. Soliciting the Pueblo of Isleta, the Governor of the Pueblo of Isleta, or the Tribal Council of the Pueblo of Isleta to ban representatives of the Indian Educators Federation (the Union) from the Pueblo of Isleta and Isleta Elementary School and enforcing any such ban by the Tribal Government of the Pueblo of Isleta that prevents Union representatives from engaging in representational activity at the Isleta Elementary School.

b. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights assured to them by the Federal Service Labor-Management Relations Statute.

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

a. Through the Principal of the Isleta Elementary School, request in writing and orally that the Pueblo of Isleta, including the Governor of the Pueblo of Isleta and the Tribal Council of the Pueblo of Isleta, rescind the ban of representatives of the Indian Educators Federation, including IEF Field Representative Dennis Ziemer, IEF President Patrick Baxtrom, and IEF Vice-President Marie Baca, from the Pueblo of Isleta and Isleta Elementary School. The request shall specifically inform officials of the Pueblo of Isleta that these Union representatives were engaged in lawful and protected representational activities at the School pursuant to the Federal Service Labor-Management Relations Statute and that any suggestion to the contrary by the Principal to officials of the Pueblo of Isleta is regretted. If the subject of the ban is, to Respondent's knowledge, thereafter made a part of a Tribal Council agenda, Respondent shall endeavor to reiterate its position, as set forth herein, to the Council, and shall notify the Union and the Denver Region of the Federal Labor Relations Authority prior to any such impending Tribal Council meeting or other consideration.

b. Unless and until the Pueblo of Isleta rescinds the ban of IEF Field Representative Dennis Ziemer, President Patrick Baxtrom, Vice-President Marie Baca, and on Union meetings at the school, transport bargaining unit employees, at their request and with official time for the transportation, to a location off of the Pueblo of Isleta during non-work time to meet periodically with the Union representative, furnishing such services and facilities as are necessary to enable unit employees to meet with their representatives.

c. Make any other necessary arrangements for nonemployee and BIA employee Union representatives to represent unit employees consistent with the Federal Service Labor-Management Relations Statute to the same extent that Union representatives represented unit employees prior to August 29, 1994.

d. Post at the Bureau of Indian Affairs, Isleta Elementary School, Pueblo of Isleta, New Mexico copies of the attached Notice to All Employees on forms furnished by the Federal Labor Relations Authority. Upon receipt of the forms, they shall be signed by the Principal, Isleta Elementary School, and they shall be posted and maintained

for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the these Notices are not altered, defaced, or covered.

e. Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Federal Labor Relations Authority, Denver Region, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

GARVIN LEE OLIVER  
Administrative Law Judge

Dated: December 14, 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 NOTIFY OUR EMPLOYEES THAT:**

**WE WILL NOT** seek to have the Pueblo of Isleta, the Governor of the Pueblo of Isleta, or the Tribal Council of the Pueblo of Isleta ban nonemployee and BIA employee representatives of the Indian Educators Federation (the Union) and Union meetings from the Pueblo of Isleta and Isleta Elementary School.

**WE WILL**, through the Principal of the Isleta Elementary School, request in writing and orally that the Pueblo of Isleta, including the Governor of the Pueblo of Isleta and the Tribal Council of the Pueblo of Isleta, rescind the ban of nonemployee and BIA employee representatives of the Indian Educators Federation, including IEF Field Representative Dennis Ziemer, President Patrick Baxtrom, Vice-President Marie Baca, and on Union meetings from the Pueblo of Isleta and Isleta Elementary School. We shall specifically inform these officials of the Pueblo of Isleta that these Union representatives were engaged in lawful and protected representational activities at the School pursuant to the Federal Service Labor-Management Relations Statute and that any suggestion to the contrary to officials of the Pueblo of Isleta by the Principal of Isleta Elementary School is regretted. If the subject of the ban is, to our knowledge, thereafter made a part of a Tribal Council agenda, we shall endeavor to reiterate our position, as set forth herein, to the Council, and shall notify the Union and the Denver Region of the Federal Labor Relations Authority prior to any such impending Tribal Council meeting or other consideration.

**WE WILL**, unless and until the Pueblo of Isleta rescinds the ban of IEF Field Representative Dennis Ziemer, President Patrick Baxtrom, Vice-President Marie Baca, and on Union meetings, transport bargaining unit employees, at their request and with official time for the transportation, to a location off the Pueblo of Isleta during non-work time to meet periodically with Union representatives, furnishing such services and facilities as are necessary to enable unit employees to meet with their representatives.

**WE WILL** make any other necessary arrangements to enable non-employee and BIA employee Union representatives to represent unit employees consistent with the Federal Service Labor-Management Relations Statute to the same extent that Union representatives represented unit employees prior to August 29,1994.

**WE WILL NOT** interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations 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 its provision, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 100, Denver, CO 80204, (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case Nos. DE-CA-50006, DE-CA-50324, DE-CA-50420, were sent to the following parties in the manner indicated:

**CERTIFIED MAIL:**

Steven B. Thoren, Esq.  
Matthew Jarvinen, Esq.  
Federal Labor Relations Authority  
1244 Speer Boulevard, Suite 100  
Denver, CO 80204

Arthur Arguedas, Esq.  
Mr. Richard Garcia  
U.S. Department of the Interior  
150 Washington Ave., Suite 207  
Santa Fe, NM 87504

Mr. Patrick Baxtrom  
Indian Educators Federation  
17997 County Road "P"  
Cortez, CO 81312

Dennis Ziemer  
Indian Educators Federation  
P.O. Box 2020  
Farmington, NM 87499

Michael Schoenfeld  
1221 Pinnacle View Drive NE  
Albuquerque, NM 87112

Dated: December 14, 1995  
Washington, DC