

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

NATIONAL PARK SERVICE Respondent and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2015 Charging Party	 Case Nos. WA-CA-50682 WA-CA-60152

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 13, 1997**, 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: December 13, 1996
Washington, DC

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

MEMORANDUM

DATE: December 13, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: NATIONAL PARK SERVICE

Respondent

and

Case Nos. WA-CA-50682
WA-CA-60152

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 2015

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

NATIONAL PARK SERVICE Respondent and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2015 Charging Party	Case Nos. WA-CA-50682 WA-CA-60152

Beatrice G. Chester, Esquire
For the Respondent

Susan L. Kane, Esquire
Michelle J. Ledina, 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 disciplined Mr. Robert G. Hyde, President of National Federation of Federal Employees, Local 2015 (hereinafter, "Union"), because he engaged in protected activity, including filing unfair labor practice charges, as alleged in the Complaint, or because, as

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)."

Respondent asserts, Mr. Hyde failed and refused to obey the repeated order of his supervisor to perform specific work, which Mr. Hyde considered less important than work he chose to perform.

This case was initiated by a charge filed on September 7, 1995, in Case No. WA-CA-50682 (G.C. Exh. 1(a)), which alleged violation of § 16(a)(1) of the Statute and a First Amended charge was filed on April 3, 1996 (G.C. Exh. 1(b)), which alleged violation of §§ 16(a)(1), (2) and (4) of the Statute; the charge in Case No. WA-CA-60152 (G.C. Exh. 1(c)) was filed on December 4, 1995, and alleged violation of §§ 16(a)(1), (2) and (4) of the Statute; the Consolidated Complaint and Notice of Hearing issued on April 9, 1996 (G.C. Exh. 1(d)), alleged violations of §§ 16(a)(1), (2) and (4) of the Statute, and set the hearing for June 26, 1996. Respondent's Motion to postpone the hearing, (G.C. Exh. 1(f)) which General Counsel opposed (G.C. Exh. 1(g)), was granted, for good cause shown, and by Order dated June 13, 1996 (G.C. Exh. 1(h)), the hearing was rescheduled for July 9, 1996. On June 14, 1996, General Counsel moved to reschedule the hearing from July 9, 1996 (G.C. Exh. 1(i)), Respondent did not object, and by Order dated June 18, 1996, for good cause shown, the hearing was rescheduled for July 23, 1996 (G.C. Exh. 1(k)), pursuant to which a hearing was duly held on July 23 and 24, 1996, in Washington, D.C., 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 each party waived. At the conclusion of the hearing, August 26, 1996, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on motion of Respondent, to which General Counsel objected in part, for good cause shown, to October 18, 1996. Respondent and General Counsel each timely filed an excellent brief on October 18, 1996, which have been carefully considered. Upon 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 Union is the exclusive representative of an appropriate unit of employees of the National Park Service (hereinafter, "Respondent").

2. Mr. Robert G. Hyde has been employed by Respondent since December, 1974 (Tr. 15); he is a GS-13 Financial Analyst in the Concessions Division (Tr. 15); and has been President of the Union since November, 1994 (Tr. 16).

Mr. Hyde has a B.S. degree in Electrical Engineering and a Master's degree in Business (Tr. 34).

3. The Chief of the Finance Branch, in which Mr. Hyde works, and his immediate supervisor from 1974 until his retirement in about April, 1994, was Mr. Andy Dixon (Tr. 77-78, 130, 207). From Mr. Dixon's retirement, Respondent for nearly a year, used a rotational system whereby each accountant and/or financial analyst in the Finance Branch would act as supervisor, i.e., Branch Chief, for six weeks (Tr. 30, 207, 208).

4. Mr. Joseph W. Pearson was employed by Respondent as a GS-11 accountant on June 29, 1992 (Tr. 126). Mr. Pearson has a B.S. degree in Finance and is a CPA (Tr. 126). Before employment with Respondent, Mr. Pearson was employed by Chevy Chase Federal Savings Bank (Tr. 126-127). In 1993, Mr. Pearson was promoted to GS-12 (Tr. 128) and in October, 1995, to GS-13 (Tr. 181-182).

5. In April, 1995, Respondent posted for competitive bid an opening for temporary Supervisor [Branch Chief] of the Finance Branch, to act for not more than one year,² and Messrs. Hyde, Pearson, Vishnu Persaud, an accountant with Respondent since about 1983 (Tr. 114, 115), and Michael Bledsoe, an accountant (Res. Exh. 1) whose date of hire was not shown, all applied. Mr. Pearson was selected and was appointed Acting Chief, Finance Branch, on April 23, 1995 (Res. Exh. 3; Tr. 131). Mr. Hyde filed an EEO complaint about his non-selection (Tr. 87).

6. From the beginning of Mr. Pearson's regime as Acting Chief, friction developed between Mr. Pearson and Mr. Hyde over the request for official time, Mr. Pearson insisting that Mr. Hyde comply with Article 4, Section 4 of

2

Mr. Robert K. Yearout, Chief, Concession Program Division, stated that the position was to function only until October, 1995, when the reorganization went into effect.

the parties' Agreement (Joint Exh. 2, Art. 4, Sec. 4. p. 53). Mr. Hyde had told Mr. Pearson he was going to be absent on Union business, to which Mr. Pearson had acquiesced (Tr. 134), but after reading Article 4 of the Agreement, on May 16, 1995,

Mr. Pearson gave Mr. Hyde a memorandum calling his attention to the provisions of Article 4, Section 4 and concluding with the admonition, ". . . Please adhere to this agreement."
(G.C. Exh. 7).

7. Not only did they disagree as to the manner of request - oral or written - but also as to when a request

3

Article 4, Section 4, in relevant part, provides as follows:

"Section 4. RELEASE TO PERFORM REPRESENTATIONAL DUTIES: When a representative needs official time to perform his/her representational duties, it will be requested on an individual case-by-case basis. All requests for the use of official time must be approved by the Employer prior to the representative leaving his/her work area.

The representative will inform his/her supervisor of the approximate amount of official time that will be needed and the general location where the representative will be performing the representational duties. If the representative requires more official time than originally approved by the supervisor, he/she will contact the supervisor to obtain approval for additional time. When a representative has completed the use of official time, he/she will check-in with his/her supervisor when returning to the work area.

. . . ." (Joint Exh. 2).

In addition, Article 4, Section 3, provides, in relevant part, that:

". . . The determination of what constitutes a reasonable amount of official time for Union representation purposes will be determined based on the requirement that the expenditure of official time must be mutually beneficial to the Employer and its employees. Union representatives shall balance their NPS workload and priorities with their Union representation functions. . . ." (Joint Exh. 2).

must be approved, i.e., specifically the meaning of "leaving his/her work area." Mr. Pearson believed that meant when he left the Financial Branch work area. Thus, on May 18, 1995, Mr. Pearson gave Mr. Hyde a Letter of Warning (G.C. Exh. 8), for having left his office and the work area of the Financial Branch, on Union business without notice or request for official time, and having gone to a conference room and closed the door. Mr. Hyde did not grieve the Letter of Warning (Tr. 23), but said he had previously used the conference room for Union business without objection of prior supervisors (Tr. 24).⁴

8. On July 31, 1995, Mr. Pearson made the work assignment pivotal to this proceeding. On that date, he notified Messrs. Hyde, Michael Bledsoe and Vishnu Persaud by electronic mail that they, and he, were to enter onto the computer information from the Annual Financial Reports (AFRs). His instruction to them was:

"The four of us will be entering the information from the long form AFR's. I want each of us to enter at least 25 AFR's per week. That should take about 6 hours per week. If you have to travel or go on annual or sick leave for more than one day in a week then you will not have to reach 25 that week. Please provide a list of the AFR's that you entered to me by the end of your respective work weeks. The first list is due this week." (G.C. Exh. 11).

Although the instruction does not make it clear, at least to me, it was, nevertheless, understood by all concerned that each was to do a total of 50 AFRs (Tr. 26, 30, 115, 144).

9. Mr. Hyde testified, without contradiction, that only one person can enter AFRs at a time (Tr. 32, 48). Mr. Bledsoe was not called as a witness; Mr. Persaud testified, but was not asked how long it took him to do his 50 AFRs; and Messrs. Hyde and Pearson disagreed markedly. As noted in his July 31, 1995, assignment, Mr. Pearson estimated that it would take about six hours to do 25 AFRs, or a total of 12 hours for 50 AFRs (G.C. Exh. 11), which he affirmed in his testimony

4

Rotating assignment period? Mr. Dixon, the last prior regular Chief, had retired in April, 1994; and Mr. Hyde was not elected President of the Union until November, 1994, although he had previously served as Acting President, for an unspecified period.

(Tr. 143-144). On the other hand, Mr. Hyde stated that some AFRs took only 10-15 minutes while others might take two hours (Tr. 32) and that he could do no more than ten AFRs per day (Tr. 32, 90).⁵ Accordingly, by Mr. Hyde's estimate it would take five work days to do 50 AFRs (Tr. 90).

10. Examples of typical concessioner Annual Financial Reports are General Counsel's Exhibit 12 (Tr. 26). The data on the first page is not entered on the computer (Tr. 27). Beginning with the next page, the Lotus program already has the information on the left side of the report, e.g., "Departmental Income"; "1. Gross Receipts"; etc., and the amounts to the right are the entries entered on the computer (Tr. 27-29).

11. Mr. Hyde stated that he entered two AFRs at the end of July (the day he received the assignment) or on the first couple of days of August (Tr. 38); but he did not tell Mr. Pearson then, or later, that he had begun the assignment (Tr. 150, 170), and he did not furnish Mr. Pearson a list showing AFRs entered - the first list being due August 4, 1995 (G.C. Exh. 11).

12. On August 1, 1995, Mr. Hyde received notice that implementation of the Concession Program Center in Denver and the reorganization of the Washington Concessions Division had been approved, together with the proposal Concession Program Reorganization (G.C. Exh. 13). The notice stated, "Should you wish to provide any proposals for the impact and implementation of this reorganization, please do so within the next 10 calendar days." (G.C. Exh. 13; Tr. 34).

Mr. Hyde responded, but not until August 24, 1995 (G.C. Exh. 19). The Reorganization proposal was not new--indeed, Mr. Hyde conceded that Mr. Yearout had presented the same proposal on December 5, 1994. Mr. Hyde was highly critical because it was the same proposal; that various objections had been raised to the December proposal, but, no changes were made. Here are Mr. Hyde's comments:

" . . . the plan submitted to us on August 1 is essentially identical to the plan presented to the

5

Plainly, Mr. Hyde did not contend that it would take 8 hours to do 10 AFRs; rather, he stated,

"Well, physically, you could probably do more than ten. I always felt that about at the ten level you started to make errors . . . There's about . . . 200 entries per report." (Tr. 32).

employees in December. If the following criticisms, all relating to the 'good government' standard, were taken seriously, one would expect that management would have made at least some change to the plan. . . .” (G.C. Exh. 19, p. 2).

Although the reorganization plan was, “. . . essentially what we expected . . .” (Tr. 94), nevertheless, the August 1, 1995, proposal was the first notice the Union had of the specifics of the plan (Tr. 34-35), which would affect nearly everyone in the bargaining unit, some quite drastically (Tr. 35), and the Union's rights had to be looked at in the context of this proposal (Tr. 94). As Mr. Hyde stated, “. . . until we got it we would have no idea.” (Tr. 94).

13. Mr. Hyde was on prior approved annual leave: August 7-11 and August 28-September 1, 1995 (Tr. 43, 49, 197). He is on a compressed workweek schedule and is off every other Friday (Tr. 44, 47). Accordingly, he was off: August 25, September 8 and 22; October 6 and 20, 1995 (Tr. 46-47, 49, 53).

From, and including, July 31, 1995, the day he was given the AFR assignment, through September 21, 1995, Mr. Hyde worked 26 days (7/31; 8/1-4, 14-18, 21-24; 9/5-7; 11-15 and 18-21).

14. On May 17, 1995, Mr. Pearson had given Mr. Hyde an assignment to contact certain regions to obtain the status of analyses they had pending (Res. Exh. 2 (Tr. 136)⁶; and on

July 28, 1995, Mr. Pearson had given Mr. Hyde the Yosemite Working Capital analysis (Res. Exh. 2. Tr. 141), but, because they had not spoken to the person in the Western Regional Office who made the request and, accordingly, were not completely clear about the issues raised, Mr. Pearson

6

On the same date, like assignments, i.e., to contact other regions, (Tr. 136), were given to Mr. Persaud, who is shown on Respondent Exhibit 2, as having completed the assignment but the date is not shown unless May 23, 1995, was the date of completion of both that assignment and the "Property Inventory" assignment, apparently assigned the same day, i.e. 5/17/95; to Mr. Barclay C. Trimble, as to whom no completion date was shown; and to Mr. Bledsoe as to whom completion was not shown on Respondent Exhibit 2; however, Mr. Pearson testified that, “. . . everyone had completed it” [i.e., Bledsoe, Persaud and Trimble] before August 21, 1995 (Tr. 149).

told Mr. Hyde just to "hang on to it for now." (Tr. 141). Mr. Pearson stated that he meant, ". . . this is an assignment for you but I'm not giving you a strict deadline to do it. You can do it when it's convenient." (Tr. 141).

15. On August 3, 1995, Mr. Pearson stated that Mr. Hyde was walking around the office talking to other employees and not doing any work (Tr. 142) and because Mr. Hyde had not completed his assignments, he, Pearson: a) gave Mr. Hyde a further assignment, to provide financial statistics on equestrian operations and set a deadline of August 25, 1995 (G.C. Exh. 22; Tr. 51-52); and b) an electronic message as follows:

"With reference to our discussion yesterday regard-ing work assignments, I expect you to have 50 AFR's entered and a list provided to me by the close of business on 8/18/95.

"With reference to the Yosemite Working Capital analysis which I assigned to you on 7/28/95, I expect that to be completed and a copy provided to me by the close of business on 8/18/95 as well.

"With reference to your 5/17/95 assignment (contact all regions and provide status of analyses), I expect that to be completed by the close of business on 8/4/95. This assignment should have been completed by 5/24/95.

"If these assignments are not completed within the time frames specified above, provided that an extended illness has not prevented you from coming to the office, you will receive a written reprimand for failure to perform your duties." (G.C. Exh. 14).

Mr. Hyde testified that after the staff meeting on August 2, 1995, at which Mr. Yearout had presented the reorganization plan to the employees (Tr. 217), as his notice had stated (G.C. Exh. 13), Mr. Pearson had come to his desk and asked if I had got the AFR assignment; that he had said, "yes" and that he, ". . .raised the conflict, because not only do I have a week of annual leave the next week . . . but the deadline for the proposal, the response to the proposal coincided with this data entry . . . And I didn't feel I could do both at the same time." (Tr. 36). Mr. Hyde stated that Mr. Pearson responded that it was management's prerogative to assign work and he didn't want to discuss it anymore (Tr. 37). Mr. Pearson did not recall speaking to Mr. Hyde on August 2 and did not recall Mr. Hyde saying he

had a conflict with performing the AFR assignment and his Union responsibilities (Tr. 184). Accordingly, because Mr. Pearson's own message of August 3 refers to a discussion regarding work assignments on August 2 and because Mr. Hyde's testimony in this regard is wholly credible, I credit Mr. Hyde's testimony concerning the August 2, 1995, discussion between Mr. Hyde and Mr. Pearson.

16. On Friday, August 4, 1995, Mr. Hyde sent an electronic message to Mr. Yearout concerning Mr. Pearson's assignment in which he stated, in part, as follows:

"This is in response to Joe Pearson's cc: mail message to me on August 3 on the subject of assignments. Mr. Pearson is not here today and will not be back for several weeks. Therefore, I am responding to you, as Mr. Pearson's superior. In this regard, Mr. Pearson has given me a number of assignments with timeframes that can not be met given my union responsibilities and, as such, I consider this effort to be harassment and a conflict with Chapter 71 of Title 5.

"As has always been the case, I have tried to balance my responsibilities to the program and to the union. . . .

"The entry of concessioner Annual Financial Report data can hardly be considered priority. It is Mr. Pearson's failure to properly assign this project earlier in the year (which is a normal Branch function) that has created this backlog. . . .

. . .

"When Mr. Pearson attempted to present these tasks to me in person, I tried to explain the time problems as is required by the Union Agreement (and common sense). His reply was 'you heard me' in a menacing tone.

"I do not believe that these matters can be discussed without an understanding of the Reorganization requirements that you and Mr. Pearson are well aware of. The reorganization of this office was only presented on Wednesday and you asked for our comments, if any, within 10 days, or during the same timeframe as Mr. Pearson is requiring these tasks. . . .

. . .

"I expect an immediate resolution to this matter as I will be on leave next week." (G.C. Exh. 15).

17. Shortly after receipt of Mr. Hyde's message, Mr. Yearout came to Mr. Hyde's office (Tr. 224) and met Mr. Hyde as he came out of his cubicle and told him he had got the message and that, obviously, there was a problem and the three of us, i.e., Mr. Hyde, Mr. Pearson and Mr. Yearout, would get together the week of August 21, which was the first time all three of them would be back in the office (Tr. 40). Mr. Yearout confirmed Mr. Hyde's testimony (Tr. 216); but no meeting was ever held (Tr. 216) and he ended up dealing with each of them, i.e., Mr. Hyde and Mr. Pearson, individually (Tr. 216).

18. As noted above, Mr. Hyde was on annual leave the week of August 7-11, 1995. When he returned on August 14, 1996, Mr. Owen, Acting Division Chief in Mr. Yearout's absence, gave Mr. Hyde an FOIA assignment (Tr. 41, 42). Mr. Pearson, who was on business and personal travel from August 5 or 6 until August 21, 1995 (Tr. 147), stated that Mr. Owen had divided the request between financial and contractual information that was requested; had given only the financial portion to Mr. Hyde; and he estimated that it should have taken four to six hours to complete Mr. Hyde's part of the FOIA response (Tr. 148). When Mr. Pearson returned on August 21, the response on the financial information had not gone into its final form so Mr. Pearson assumed responsibility for completing the response (Tr. 148-149).

19. By memorandum dated August 17, 1995 (G.C. Exh. 16), Mr. Hyde completed the Yosemite Working Capital analysis, a day before the deadline set by General Counsel's Exhibit 14; and on August 18, 1995, he contacted the Field Areas with regard to the contracts assigned to him (G.C. Exh. 17a through 17e) - the May 17, 1995, assignment - two weeks after the deadline set by General Counsel's Exhibit 14.

20. On August 22, 1995, Mr. Pearson issued Mr. Hyde the following memorandum re: "Failure to Follow Instructions",

"On August 3, 1995, I provided you with a memorandum which outlined your work assignments and the time frames in which I expected the completion. Though you were provided with sufficient time to complete the assignments, you

have failed to do so. Since I was on travel and therefore unable to help you with your work, I will allow you until the close of business on August 25, 1995, to complete the assignments." (G.C. Exh. 18).

Inasmuch as the May 17 and July 28, 1995, assignments had been completed, as noted above, this left the August 3, 1995, equestrian assignment and the July 31, 1995, AFR assignment.

21. As noted earlier, on August 24, 1995, Mr. Hyde responded to the proposed reorganization in a letter to Mr. John J. Reynolds, Deputy Director (G.C. Exh. 19). Further, as also noted earlier, Mr. Hyde on August 24, 1995, also responded, by electronic mail, to Golden Gate's equestrian feasibility request (G.C. Exh. 22, Attachment).

22. By memorandum dated August 25, 1995, Mr. Yearout responded to Mr. Hyde's August 4, 1995 message [G.C. Exh. 15] concerning work assignments and stated as follows:

"This is in response to your August 4 message regarding work assignments. I indicated to you that week that I would respond to you this week because of travel. I have discussed your concerns with Joe Pearson, and have sought advice from both the Labor Relations office and the Employee Relations office since your message was concerned with both employee relations and union issues.

"I have concluded that the work given to you by Mr. Pearson is an acceptable workload, taking into account your responsibilities with the Union. The reorganization plan presented to the Division staff did not include any surprises, and have been discussed formally and informally for several months. The reorganization of the Concession Division was approved some time ago, and the number of Division employees involved is not an over-whelming number. Therefore, it seems to me that

you have adequate time to perform both your work requirements and union responsibilities within the ten-day period mentioned in your message. As I have discussed with you previously, I expect you to use your best judgement in determining the appropriate amount of time to spend on Union business, and I recognize that because of the reorganization, the amount of time you will need to spend on Union business will be higher than

normal. However, your primary responsibility, and your primary use of time while on duty, is to perform work for the Division. Again, I think the amount of work assigned to you should not prevent you from performing an appropriate amount of your time on Union matters." (G.C. Exh. 20).

23. Mr. Hyde stated he could have done some AFRs before September 8, 1995, but had not because, ". . . I chose to do the other deadline work rather than to start a project [AFRs] that I considered of less importance. . . ." (Tr. 98). Indeed, on August 23, 1995, Mr. Hyde submitted to Mr. Pearson a memorandum (Res. Exh. 4, Attachment) re "Proposed Agreement, Evelyn Hill, Inc., Franchise Fee Negotiations, Statue of Liberty National Monument", which was not a task assignment to him (Res. Exh. 4; Tr. 151-152).

24. On September 5, 1995, Mr. Pearson issued a Letter of Reprimand to Mr. Hyde (G.C. Exh. 21) for: a) failure to complete assignments; and b) failure to follow proper procedures when using official time. As to the failure to complete assignments, the Letter of Reprimand stated:

"On August 3, 1995, I provided you with a memorandum which outlined your work assignments and the time frames in which I expected them completed. These assignments were not very complex nor unreasonable for you to complete. On August 22, 1995, I extended your assignment deadline until c.o.b. August 25. This additional time was permitted because I took into account that I was on travel and therefore unavailable to assist you. Notwithstanding, you have yet to complete the work assigned to you and directed to complete by August 25, 1995. In addition, on August 3, 1995, I requested that you provide Golden Gate NRA with some operational statistics [equestrian feasibility]. That assignment has not been completed either. [Mr. Pearson was in error. Mr. Hyde had responded, by electronic mail to Mr. Max Gallero on August 24, 1995 (G.C. Exh. 22, Attachment). However, there is no indication that he informed Mr. Pearson.]

"Your failure to complete assignments has put a strain on our branch and has hurt the morale of your co-workers. All time frames that have been set for completion of assignments have been taken into account time required to perform your union activities; thus, there is no reason for your

failure to complete these assignments. I, therefore, again instruct you to complete these assignments by c.o.b. September 8, 1995. You should be advised that your failure to follow my instructions and complete your assignments could lead to more severe disciplinary action." (G.C. Exh. 21) (Emphasis supplied).

As to the failure to properly request official time, the Letter of Reprimand stated as follows:

"As you know, there has been concern regarding your failure to request official time through your supervisor when engaging in union activity. On May 16, 1995, you received a memorandum from me which reminded you of the proper procedures to follow when requesting a release to perform representational duties. Additionally, you received a Letter of Warning on May 18, 1995, when you failed to follow proper procedures regarding the same subject.

"On June 1, 1995, at 3:45 pm, a woman came to your office and a 35 minute discussion ensued regarding personnel/union related matters. This meeting, which required the use of official time, was not authorized by me in advance. On August 24, 1995, at approximately 8:55 am, you again engaged in union-related business that required approval for official time; however, you failed to obtain approval. Specifically, you met with a National Park Service employee in the Concessions Division file room for approximately 20 minutes.

"As mentioned in my May 18, 1995, memorandum and as we have discussed in the past, it is imperative that you properly schedule and plan your union related activity. This is vital to achieving a proper balance between the Concessions work you are paid to do for the National Park Service and the collateral duties you perform as President of NFFE Local 2015. Again, I am in no way attempting to prevent or prohibit you from performing your representational duties. I only ask that proper procedures be followed now and in the future when requesting official time to perform these duties." (G.C. Exh. 21).

Mr. Hyde filed the charge, in Case No. WA-CA-50682, dated September 6, on September 7, 1995 (G.C. Exh. 1(a)), alleging that the Letter of Reprimand violated § 16(a)(1) of the

Statute (amended on April 3, 1996 (G.C. Exh. 1(b) to allege violation of §§ 16 (a)(1), (2) and (4) of the Statute).

25. By memorandum dated September 6, 1995, Mr. Hyde informed Mr. Pearson that he would not be able to meet the assignment deadline [September 8] established in Mr. Pearson's September 5, memorandum and stated, in part, as follows:

". . . While I recognize the right of management to assign work, this right must be tempered with my responsibilities to the bargaining unit members. When I tried to discuss these responsibilities with you on August 3, you refused to entertain the discussion.

"As a result of recent events, I will be preparing a Unfair Labor Practice Charge and a further response to the Director on the reorganization. These matters require my immediate attention and will undoubtedly take more than the two remaining workdays left this week. I will also be meeting in the near future with Labor Relations to discuss the groundrules for negotiating the reorganization. Such a meeting will require additional official time to meet with members of the Executive Board of the local. I will let you know when this official time will be required.

"Please be assured that I understand the need to enter financial information into the computer but it is hardly a priority matter. It has traditionally been performed in spare time and between projects and can undoubtedly continue to be managed in such a manner. Certainly, it is not needed by the end of this week as you have required. In fact, you are well aware that it would not be possible to meet the short deadline you have set even if I ignored my union responsibilities and worked full time on these assignments. As such, you have again given deadlines that you know I cannot meet and therefore have set me to fail.

. . . ." (G.C. Exh. 23).

26. Mr. Pearson responded the same day, September 6, 1995, by memorandum in which he stated as follows:

"This memorandum is in response to your September 6, 1995, memorandum to me regarding your

assignments. You received one assignment on July 31, 1995, and the other on August 3, 1995. This means that you have had **over one month**, not including your week of annual leave, to complete assignments that should not have taken you more than **one week**.

"It is your duty to complete these within the more than reasonable time frames that I have established. Your list of upcoming union activities in your memorandum is interesting, but it in no way relieves you of your responsibility to the Concessions Division of the National Park Service. I also do not consider this list a request for official time. Any request for official time should specify exact dates and times.

Your statement that you will not be able to meet the assignment deadline established in my September 5, 1995, memorandum also does not relieve you of your responsibility. I, therefore, again instruct you to complete these assignments by c.o.b. September 8, 1995. You should be advised that your failure to follow my instructions and complete your assignments could lead to more severe disciplinary action." (G.C. Exh. 26)

27. By separate memorandum, also on September 6, 1995, Mr. Pearson reminded Mr. Hyde that,

"As I mentioned in my memorandum to you also dated September 6, 1995 . . . I do not consider your memorandum to me (same date, same subject) as a request for official time. Your memorandum described various union activities and meetings but it failed to mention dates or times.

"In your meeting with me this afternoon, you requested official time to perform your union activities for the entire next two days and into next week. Such a request is unprecedented considering the amount of time that you are requesting could easily exceed a consecutive 27 hour period. Historically, the amount of time requested by you rarely exceeded 2 hours. As you know, your Concessions Division work load is such that an extended period of official time will make it difficult for you to complete your assignments.

"Therefore, in order to consider your request, I am requiring you to submit it to me in writing. This request should list the exact dates and times." (G.C. Exh. 27).

Mr. Hyde replied, still on September 6, 1995, as follows:

"In response to your September 6, memorandum, please consider the following comments. This request for official time is not unprecedented either in amount of time or in relation to the reorganization activities that are going on. Please note that you have repeatedly stressed an acceptance of such time needs in prior correspondence even though your actions have not followed this commitment.

"I believe my earlier request and our conversations this afternoon were both specific and easily understood. Based on past practice, such requests for official time have never been required to be in writing since I have been President of the union and I officially protest this requirement.

"However, to move this forward, I am requesting official time to perform needed representational duties relative to the reorganization and will include the preparation of various documents for individuals both inside and outside the National Park Service. It will include trips outside the building and I will let you know when I will be going. It is expected that this will require the remainder of today, tomorrow (September 7, and may extend to next week before the details are completed. Since I am going through the trouble of preparing this request, even though I am on a strict deadline to perform these activities, I am requesting official time for Monday, September 11. More detail should not be necessary or appropriate for you to consider this request.

"Please be advised that further attempts to hinder my efforts in this regard maybe considered unfair labor practices." (G.C. Exh. 28)

28. On September 7, 1995, Mr. Pearson responded to Mr. Hyde's written request for official time as follows:

"I am in receipt of your memorandum to me dated September 6, 1995, (Subject: Assignments) in which

you are requesting official time for September 6, September 7 and September 11, 1995. Absent of any additional explanation from you in writing, I am denying your request for official time.

"The agreement between the National Park Service and the NFFE, Local 2015, is specific with respect to the authorization of official time during working hours. Section 4 of Article 4 of the agreement is as follows:

"When a representative needs official time to perform his/her representational duties, it will be requested on an individual case-by-case basis. All requests for the use of official time must be approved by the Employer **prior** to the representative leaving his/her work area.

"The representative will inform his/her supervisor of the **appropriate amount** of official time that will be needed and the **general location** where the representative will be performing the representational duties.

"Your memorandum to me failed to list the approximate amount of official time needed nor the general location where the representative will be. Additionally, your absence this morning between 9:30 am and 12:45 pm was prior to any approval from myself. Unless you are able to provide me with more information as to your whereabouts, I will have to charge you as AWOL (absent without leave)." (G.C. Exh. 29).

29. Mr. Hyde wrote a letter to Mr. Roger Kennedy, Director, dated September 7, 1995, ". . .to formally protest certain actions that have been taken in regard to the reorganization of the Washington Office (WASO) and the responsibilities of the National Park Service (NPS) in regard to working with the union on this matter. . . ." (G.C. Exh. 30). In addition, Mr. Hyde concluded with the following comments,

"Finally, we want to bring to your attention the serious matter of the harassment of the union president (the undersigned). For several months, we have been hindered in our attempt to properly represent the WASO bargaining unit members by

various actions taken by management officials that are unprecedented in the history of our relationship with the NPS. These actions have included attempts to disrupt conversations between the President and bargaining unit members and, lately, has moved to attempts to make assignments in such a manner so as to obstruct our ability to perform essential union functions. . . . While the most recent incident consists of a letter of reprimand, additional threats have been made for further disciplinary action. These actions are completely without merit, are counterproductive to the reorganization, and have resulted in a second ULP charge, delivered to the FLRA and you today. [Charge in Case No. WA-CA-50682, Par. 24, supra].

. . . ." (G.C. Exh. 30).

On September 7, 1995, Mr. Hyde left the office without permission for over three hours and was charged with AWOL for failure to provide documentation (Res. Exh. 3)

30. By letter dated September 8, 1995, Mr. Yearout responded to Mr. Hyde's August 24, 1995 letter to Mr. Reynolds (G.C. Exh. 31). Mr. Yearout concluded as follows:

"In sum, based on the above chronology of events, I do not believe the union has met its obligation to present impact and implementation proposals, comments, or requests for additional information in a timely manner or in accordance with the union contract. However, in the spirit of cooperation, I will consider any appropriate I&I proposals if they are presented in a timely fashion. Note that, as per the contract, I may find it necessary to begin implementation of the reorganization prior to the completion of negotiations. Specifically, I plan to proceed with the reassignment of those employees physically relocating from WASO to Denver beginning October 1 for budgetary reasons, as well as the financial assistant position (which will be duty stationed in Washington)." (G.C. Exh. 31).

31. On September 11, 1995, Mr. Pearson gave Mr. Hyde another FOIA assignment with a due date of September 12, 1995 (Tr. 162, 163). Mr. Pearson estimated that the assignment would not require more than six hours (Tr. 163). In addition, Mr. Hyde was instructed to transfer data files

from his personal computer to a share drive so that another employee could complete a further FOIA assignment (Res. Exh. 5).

On the morning of September 12, Mr. Hyde requested official time for two meetings, which request was denied until he completed his FOIA assignment and the transfer of data. Mr. Hyde completed the two assignments and was granted the requested two hours of official time (Res. Exhs. 3 and 5; Tr. 163-165).

Mr. Hyde requested and was granted two hours official time on September 13 and six hours official time on September 14, 1995 (Res. Exh. 3; Tr. 166).

32. On September 15, 1995, Mr. Pearson issued Mr. Hyde a proposed five day suspension for failure to complete assignments as instructed on August 3, 1995, which time was extended first to August 25 and later to September 8, 1995 (G.C. Exh. 32).

Mr. Pearson further directed Mr. Hyde to complete the assignments, as directed by the August 3, 1995, memorandum, ". . . by c.o.b. September 25, 1995." (G.C. Exh. 32).

Mr. Hyde was given 10 days to answer, ". . . orally and/or in writing to Ms. Maureen Finnerty, Associate Director, Operations . . . right to be represented . . . the use of official time. . . ." (G.C. Exh. 32).

Mr. Pearson summed up his position as follows:

". . . All time frames that have been set for completion of assignments have taken into account time required to perform your union activities; thus, there is no reason for your failure to complete these assignments. The work, which was assigned to you more than six weeks ago, should have taken less than a week to complete. The fact that you believe the assignments are not important or are not priority items is not a justifiable reason not to follow my orders and complete the assignments. It is my responsibility to prioritize work and establish deadlines for the branch, not yours. . . ." (G.C. Exh. 32).

33. Mr. Hyde requested, and was granted, an extension of time to respond to the proposed suspension to October 11, 1995 (G.C. Exhibits 33 and 34) and completed the July 31,

1995 assignment to enter 50 AFRs (G.C. Exh. 35).⁷ Mr. Hyde testified that he completed the entry of the AFRs on September 22, 1995 (Tr. 108); but that, as he was off on Friday, September 25 (Tr. 67, 108), he did not tell Mr. Pearson until Monday, September 25 (Tr. 67, 108). Mr. Pearson testified that Mr. Hyde did not tell him on September 25 that he had completed the entry of the AFRs (Tr. 171); that on September 25 he was aware from the computer entry of the total number of AFRs entered that additional AFRs had been entered and he believed Mr. Hyde, ". . . may have completed a portion of it." (Tr. 170); however, Mr. Hyde had provided no list of AFRs entered and, accordingly at 2:58 pm on September 26, 1995, he sent the following electronic message to Mr. Hyde,

"As per your original instructions in the cc: mail message that you received from me on 7/31/95, please provide me a list of all of the AFR's (sic) that you have entered." (G.C. Exh. 36).

Mr. Hyde, in response to the electronic message of September 26, on the same day, September 26, 1995, did submit a list of the 50 AFRs he had entered (G.C. Exh. 35) and thereupon completed his AFR assignment (Res. Exh. 3; G.C. Exh. 40, p. 2; Tr. 172, 173).

7

As noted in Paragraph 19, supra, Mr. Hyde had completed the Yosemite Working Capital analysis on August 17, 1995, and had contacted the Field Areas on August 18, 1995. Consequently, the only uncompleted assignment, "as instructed on August 3, 1995" was the entry of the AFRs and Mr. Pearson's reference to assignments in the plural in General Counsel's Exhibit 32 was, in the sense I understood the parties to have used the term, "assignment" to mean a specified task, such as: enter AFRs (one task); Yosemite Working Capital analysis (one task), etc., incorrect. It is true, of course, that there were multiple AFRs to be entered, so, in this sense, there were assignments in the plural. Moreover, Mr. Pearson tasked Mr. Hyde to: a) Enter the AFRs; and b) Report the AFRs entered, which constituted two distinct assignments.

In any event, nothing in the record shows that Mr. Pearson's issuance of the proposed suspension resulted from any error, or misconception, that assignments referenced in his August 3, 1995, memorandum except entry of the AFRs had not been completed. To the contrary, the record shows that Mr. Pearson was fully aware that Mr. Hyde had, tardily, completed the, ". . . May 17 assignment (12 weeks late) and July 28 assignment (3 days late)." (Res. Exh. 3, August 21, 1995, entry).

Mr. Pearson's entry on his memorandum to Mr. Carlos Vargas (Res. Exh. 3), ". . . September 25, 1995 Deadline for July 31 assignment. Assignment only partially completed", could mean that Mr. Hyde had entered the AFRs but had not submitted a list, or it could mean that Mr. Pearson simply, ". . . knew . . . that additional data had been entered in the past seven days." (Tr. 171) and believed Mr. Hyde had, ". . . completed a portion . . ." (Tr. 170) of his assignment. I found Mr. Pearson's testimony in this regard wholly credible and I credit his testimony that Mr. Hyde did not tell him on September 25 that he had completed the entry of AFRs. I have credited Mr. Pearson's testimony in this regard, and do not credit Mr. Hyde's testimony, in part, because Mr. Hyde made no such contention in his written response of October 5, 1995, to Ms. Finnerty (G.C. Exh. 39) which led her to conclude, without qualification, that, ". . . you did not complete the assignment until September 26, 1995, one day after the above date set in the proposal suspension memorandum of September 15, 1995." (G.C. Exh. 40, p. 2). Even though Mr. Pearson stated that he wouldn't have considered the assignment completed until the list was received (Tr. 173), had Mr. Hyde shown that he informed Mr. Pearson on September 25, 1995, that he had completed the entry of the AFRs, such showing, at the very least, would have constituted strong extenuating evidence, if not, in fact, timely completion of the assignment. Mr. Hyde may, as he stated, have completed the entry of the AFRs on Thursday, September 22; but, under threat of further action if he did not complete the assignment by c.o.b. September 25, 1995, it is strange that Mr. Hyde did not leave a message for Mr. Pearson on September 22; and if he had prepared his list on September 25, as General Counsel's Exhibit 35 purports, it is even stranger that he did not submit the list to Mr. Pearson on September 25 - indeed, that he did not until some time after 2:58 pm on September 26 following Mr. Pearson's request for, ". . . a list of all of the AFR's (sic) that you have entered" (G.C. Exh. 36; Tr. 276). Additionally, as noted above, Mr. Hyde did not inform Mr. Pearson on August 24, 1995, that he had responded to Golden Gate's equestrian request (G.C. Exh. 22, Attachment). Further, Mr. Hyde had not stamped "entered" on the cover of the AFRs he had entered to prevent duplication and when Mr. Pearson, on September 28, 1995, asked him to do so, Mr. Hyde became incensed and refused to comply (Tr. 174-175).

34. Mr. Hyde did appeal the proposed suspension to Ms. Finnerty (G.C. Exh. 39); was represented at the oral reply on October 11, 1995; and Ms. Finnerty issued her

decision on October 12, 1995, in which she found, ". . . no reason to overrule the proposed suspension" and ordered the suspension to be effective Monday, October 16, 1995, through Friday, October 20, 1995 (G.C. Exh. 40). Mr. Hyde served the five day suspension as directed (Tr. 74).

35. On December 4, 1995, the charge in Case No. WA-CA-60152 (G.C. Exh. 1(c)) was filed alleging violation of §§ 16(a)(1), (2) and (4) of the Statute as the result of the suspension of Mr. Hyde.

36. The Complaint, of course, alleges that Respondent violated §§ 16(a)(1), (2) and (4) because of the letter of reprimand, on, or about, September 5, 1995, and the suspension, on, or about, October 12, 1995, of Mr. Hyde, all of which was because Mr. Hyde engaged in protected activity, including serving as President of Local 2015 (G.C. Exh. 1 (d)).

The letter of reprimand was premised, in part, on the charge of failing to properly request official time as set forth in Article 4, Section 4, of the Agreement of the parties (G.C. Exh. 2). It is not an unfair labor practice to insist upon compliance with an agreement governing official time. Department of Health, Education and Welfare, Region V, Chicago, Illinois, 4 FLRA 736 (1980); Marine Corps Logistics Base, Barstow, California, 23 FLRA 594 (1986); U.S. Department of Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Service Center, Ogden, Utah, 41 FLRA 1212, 1215 (1991). As noted earlier, on May 16, 1995, Mr. Pearson gave Mr. Hyde a memorandum calling his attention to Article 4, Section 4, and concluded with the admonition, ". . . Please adhere to this agreement." (G.C. Exh. 7.) On May 18, 1995, Mr. Pearson gave Mr. Hyde a Letter of Warning for having left his office [work area] and gone into a conference room and closed the door without complying with Article 4, Section 4. This is the only incident mentioned in the Letter of Reprimand of September 5, 1995 (G.C. Exh. 21) about which there was any discussion (Tr. 22-23) and was raised by Mr. Hyde in his letter of September 7, 1995, to Director Kennedy (G.C. Exh. 30, p. 2). The record shows that Mr. Pearson's concern was Mr. Hyde's compliance with the Agreement. Without doubt, Mr. Hyde construed the agreement to mean, essentially, what he wanted it to mean. For example, with regard to the conference room, he asserted that "leaving his/her work area" meant leaving the building; but the Agreement does not say "building" or "premises" and Mr. Pearson's assertion that it meant Mr. Hyde's office and the office area of Finance Branch is at least as rational as

Mr. Hyde's interpretation. I express no opinion as to the meaning of Article 4. I conclude, merely, that insistence on compliance with it was not an unfair labor practice.

The other incident discussed occurred on, or about, September 7, 1995, after the Letter of Reprimand, when Mr. Pearson charged Mr. Hyde 3 hours and 15 minutes AWOL because, ". . . your absence this morning between 9:30 am and 12:45 pm was prior to any approval . . . Unless you are able to provide me with more information as to your whereabouts, I will have to charge you as AWOL (absent without leave)." (G.C. Exh. 29). It is true that Mr. Hyde, after the fact, told Respondent he had a meeting with FLRA⁸ and had the FLRA verify the meeting (G.C. Exh. 39; Tr. 62) and now Mr. Hyde's construction of the Agreement seemed to be that no approval is required if he has a meeting with FLRA; nevertheless, Mr. Pearson's complaint, in part, was that Mr. Hyde, contrary to the Agreement, had left before his request for official time had been approved - indeed before notice of any such meeting (See, G.C. Exhs. 28, 29). The merits of the respective assertions are not before me except to the extent that General Counsel alleges that Mr. Pearson improperly reprimanded Mr. Hyde for failing to request official time properly. Again, I conclude that Mr. Pearson's insistence that Mr. Hyde comply with the

8

I do not credit Mr. Hyde's testimony that he told Mr. Pearson before he left that he had a meeting with FLRA (Tr. 106, 107). Mr. Pearson credibly testified that on September 6, "Mr. Hyde . . . orally requested . . . three days of official time" (Tr. 159); that ". . . . I wanted . . . his request in writing" (Tr. 160); that Mr. Hyde responded by General Council Exhibit 28; that ". . . I couldn't tell where he was going to be. The general location I wasn't sure when (sic) he was referring to outside the National Park Service. The next sentence said it will include trips outside the building and I will let you know when I will be going. . . ." (Tr. 160-161). While Mr. Hyde may, in his fashion, have assumed that ". . . representational duties . . ." (G.C. Exh. 28) meant meeting with FLRA, it certainly fell short of informing Mr. Pearson where he was going. Nor, had he told Mr. Pearson in advance, would there have been any need for Mr. Hyde to have the FLRA representative verify the meeting (G.C. Exh. 39, p. 4). Mr. Pearson's testimony is supported by Mr. Hyde's response (G.C. Exh. 28), is consistent with denial of official time because, ". . . your memorandum failed to list . . . the general location where the representative will be. Additionally, your absence . . . was prior to any approval . . ." (G.C. Exh. 29). Consequently, I credit Mr. Pearson's testimony.

Agreement was not an unfair labor practice. The record is silent as to any practice under Mr. Dixon, the last appointed supervisor before Mr. Pearson and who retired in April 1994, contrary to the specific language of Article 4, Section 4, of the Agreement; and whatever effect conduct condoned during the rotational period [Mr. Hyde was not elected President until November, 1994, (Tr. 16) and the record does not show for what period he was acting President; and Mr. Pearson was appointed supervisor April 23, 1995 (Res. Exh. 3; Tr. 131)], Mr. Pearson gave Mr. Hyde notice on May 16, 1995, that he must comply with Article 4, Section 4, and, as the Authority stated in Department of Health, Education and Welfare, Region V, Chicago, Illinois, supra, ". . . notice to the local Union president concerning his need to obtain advance approval for release from duty before engaging in union activities did not constitute a change in conditions of employment but rather was a reaffirmation of the established policy" (4 FLRA at 737; see, also, 4 FLRA at 752).

Mr. Pearson had been a member of the Union (Tr. 185) and, apart from disagreement about compliance with the Agreement, Mr. Pearson consistently approved the official leave requests of Mr. Hyde with one exception and that was Mr. Hyde's October 2, 1995, request for official time to file an EEO complaint and to prepare a response to his proposed suspension, which Mr. Pearson denied; however Mr. Yearout granted two days (Res. Exhs. 3, 9; Tr. 176).

37. Mr. Bledsoe was not called as a witness and the testimony as to when he entered his AFRs is a bit ambiguous. Mr. Hyde testified that Mr. Bledsoe was, ". . . entering data . . ." (Tr. 50) during the week of August 21 (Tr. 48); and in his response to Ms. Finnerty he had written, ". . . One of the two other employees performed it during the last two weeks in August. . . ." (G.C. Exh. 39, p. 4). Mr. Pearson testified that Mr. Bledsoe completed his AFR assignment by August 22 (Tr. 150). I conclude that Mr. Bledsoe completed his AFR assignment on August 22 which is consistent with Mr. Hyde's testimony that Mr. Bledsoe was entering AFR data the week of August 21. There is no indication on the record that Mr. Bledsoe submitted any report to Mr. Pearson prior to completion of the assignment on August 22, 1995.

Mr. Pearson's assignment record (Res. Exh. 2) for Mr. Bledsoe show only three assignments: the 5/17/95 assignment to contact Regions (which Mr. Pearson's testimony shows was completed before August 21, 1995); a 6/8/95 assignment, completed 7/28/95; and the 7/31/95 AFR assignment. The record is otherwise silent as to

Mr. Bledsoe. Mr. Pearson's assignment record shows four assignments to Mr. Persaud: 5/11/95; 5/17/95 contact Regions (completed, it would appear before August 21) and Property Inventory (Completed 5/23/95); and 7/31/95 AFR assignment, completed in November, 1995 (Tr. 117-118). However, Mr. Persaud on May 23, 1995, had given Mr. Pearson a list of some eleven projects on which he was currently working (Res. Exh. 2, Attachment). Further, Mr. Persaud testified concerning work which had priority over other assignments (Tr. 117). Mr. Pearson's assignment record shows four or five undated assignments to Barclay C. Trimble, an accountant, and the common May 17, 1995, assignment to contact Regions (Res. Exh. 2). Mr. Trimble was detailed to Denver (G.C. Exh. 13, Attachment, p. 2); however, Mr. Pearson's testimony shows that he, as well as Messrs. Bledsoe and Persaud, had completed this assignment before August 21, 1995 (Tr. 149).

Mr. Pearson's assignment record for Mr. Hyde (Res. Exh. 2) shows eight assignments, each dated as follows: 5/15/95 (50% Rule elimination), completed 5/31/95; 5/17/95 (contact Regions), completed 8/21/95; 7/10/95 (Evelyn Hill), completed 7/28/95; 7/28/95 (Yosemite), completed 8/17/95; 7/31/95 (AFRs), completed 9/26/95; 8/31/95 (equestrian analysis), not shown as completed [due 8/25/95; completed 8/24/95 (G.C. Exh. 22, Attachment)]; 9/11/95 (FOIA request), completed 9/12/95; and 9/25/95 (Bandy Creek), not shown as completed [due 10/23/95; completed 10/26/95 (Res. Exh. 2, Attachment)].

CONCLUSIONS

For reasons set forth above, I have concluded that Respondent did not violate the Statute by insisting that Mr. Hyde, as President of the Union, comply with Article 4, Section 4, of the Agreement which provides, in part, that, ". . . when a representative needs official time to perform . . . representational duties, it will be requested on an individual case-by-case basis. All requests for the use of official time must be approved by the Employer prior to the representative leaving his/her work area. The representative will inform his/her supervisor of the appropriate amount of official time that will be needed and the general location where the representatives will be performing the representa-tional duties. . . ." (Jt. Exh. 2, Art. 4, Sec. 4). To be sure, Mr. Hyde and Mr. Pearson construed Article 4, Section 4, differently; but the record does not show that Mr. Pearson's action impermissibly interfered with Mr. Hyde's performance of his representational duties. For example, Mr. Hyde, in his September 6, 1995, request stated in part, ". . . I am

requesting official time to perform needed representational duties It will include trips outside the building and I will let you know when I will be going. . . ." (G.C. Exh. 28). Mr. Pearson, responded, in part, that, ". . . Your memorandum . . . failed to list the appropriate amount of official time needed nor the general location where the representative will be. . . ." (G.C. Exh. 29). The record shows that when Mr. Hyde complied with Article 4, Section 4, Respondent granted official time.

1. Was Disparate Treatment of President Hyde Supported by a Preponderance of the Evidence?

Mr. Hyde was suspended for five days because he did not complete the entry of 50 AFRs by September 8, 1995, which assignment had been given him on July 31, 1995, and because, after issuance of the Proposed Suspension on September 15, 1995, which had directed that he complete the AFR assignment by, ". . . c.o.b. September 25, 1995." (G.C. Exh. 32), ". . . despite the importance stressed to complete this assignment, you did not complete this assignment until September 26, 1995, one day after the due date set in the proposed suspension memorandum of September 15, 1995. . . . The simple fact is that you did not follow a written order from your supervisor when the order was clear, compliance would not have taken long, and it would not have placed you in any physical danger. An employee always has the option to grieve an action or order by a supervisor which he or she believes to be inappropriate or with which he or she disagrees. . . . However, it is not within your purview to decide what orders you will follow and what orders you will not. . . ." (G.C. Exh. 40).

A. Mr. Hyde's choice of priorities

Mr. Hyde's assertion that it would take five days to do 50 AFRs may have been excessive and Mr. Pearson's assertion that it would take only 12 hours to do them may have been low; but taking Mr. Hyde's estimate of five days, there is no doubt that it would have been possible for Mr. Hyde to have completed the AFR assignment by September 8, 1995, inasmuch as he had 17 workdays from, and including, July 31 through September 7; Mr. Hyde admitted that he could have done more AFRs before September 8 [he did two on July 31 or on the first day or so of August], but, ". . . chose to do the other deadline work rather than to start a project [AFRs] that I considered of less importance . . ." (Tr. 98). Further, on August 23, 1995, Mr. Hyde submitted a memorandum on a matter which had not been assigned to him (Res. Exh. 24; Tr. 151-152). Moreover, while not the basis for the recommended suspension of September 15, 1995, Mr. Hyde

did not complete the assignment of entering the AFRs and submitting a list of AFRs entered until September 26, 1995, as stated by Ms. Finnerty in her decision sustaining the proposed suspension.

The record showed that Mr. Hyde strongly protested his non-selection as Temporary Supervisor and he chafed under Mr. Pearson's supervision.

B. Disparate treatment of Mr. Hyde

Mr. Pearson on May 17, 1995, assigned to Messrs. Hyde, Persaud, Bledsoe and Trimble the task of contacting Regions. Messrs. Hyde, Persaud and Bledsoe on July 31, 1995, were assigned the task of entering 50 AFRs. The following day, August 1, Mr. Hyde received Respondent's reorganization plan, which had a ten-day deadline for the Union's response, and on August 2, following a meeting at which Mr. Yearout presented the reorganization plan to the employees, Mr. Hyde attempted to discuss the conflict between his Union activity and entry of AFRs with Mr. Pearson, but was brusquely rebuked.

On August 3, 1995, Mr. Pearson: a) gave Mr. Hyde a further assignment to provide financial statistics on equestrian operations and set a deadline of August 25, 1995 (G.C. Exh. 22; Tr. 51-52); and b) set deadlines for work previously assigned as follows: AFRs, August 18, 1995; Yosemite Working Capital analysis, August 18, 1995; and contacting the Regions, August 4, 1995 (G.C. Exh. 14).

Mr. Hyde was on prior approved annual leave August 7-11, 1995, a fact Respondent consistently ignored (see, for example, G.C. Exh. 26; Res. Exh. 3, p. 2, although his week of annual leave August 28 - September 1, 1995, was duly noted (Res. Exh. 3, p. 3).

The record shows that only Mr. Hyde was given specific deadlines for the completion of his work assignments, such deadlines being imposed because of Mr. Hyde's Union activity, i.e., ". . . All time frames . . . have taken into account time requested to perform your union activities. . . ." (G.C. Exh. 21).

C. Deadlines were discriminatory and pretextual

On August 3, 1995, when Mr. Hyde was given the August 18, 1995, deadline for completion of the AFRs, Mr. Hyde had only seven work days, including August 3, to complete that assignment as well as the Yosemite assignment; contacting Regions was due August 4 and the equestrian

inquiry was due August 25. As he felt he could not meet Mr. Pearson's deadlines because of his Union responsibilities, Mr. Hyde, on August 4, 1995 wrote Mr. Yearout, as Mr. Pearson was then out of the office and would not be back for several weeks (G.C. Exh. 15). Mr. Yearout came to Mr. Hyde's office and told Mr. Hyde that, obviously, there was a problem and the three of them - Yearout, Pearson and Hyde - would get together the week of August 21, which was the first time all three of them would be in the office (Tr. 40, 216). Nevertheless, no meeting was ever held and Mr. Yearout, after talking to Mr. Pearson, but not Mr. Hyde, wrote Mr. Hyde on August 25, 1995, that Mr. Pearson's work assignments were appropriate and concluded stating:

" . . . I recognize that because of the reorganization, the amount of time you will need to spend on Union business will be higher than normal. However, your primary responsibility, and your primary use of time while on duty, is to perform work for the Division. Again, I think the amount of work assigned to you should not prevent you from performing an appropriate amount of your time on Union matters." (G.C. Exh. 20).

On August 14, 1995, when he returned from annual leave, the Acting Division Chief, in Mr. Yearout's absence, gave Mr. Hyde an FOIA assignment. Although this assignment was not given a fixed deadline, it is of high priority and occupied much of Mr. Hyde's time the week of August 14-18.

On August 22, 1995, Mr. Pearson extended the deadlines for the three assignments covered by his August 3, 1995, memorandum to August 25, 1995 (G.C. Exh. 18). The deadline for the equestrian inquiry (August 25) was not extended and was completed August 24, 1995 (G.C. Exh. 22); however, Mr. Hyde did not inform Mr. Pearson. In the meantime, before Mr. Pearson had extended the deadline, Mr. Hyde completed contacting the Regions, [Messrs. Persaud, Bledsoe and Trimble completed this task before August 21, 1995].

The record shows no weekly reports by Mr. Bledsoe for the weeks ending August 4, 11 or 18; nor does the record show that Mr. Bledsoe entered any AFRs July 31-August 4 and/or August 7-11, this being its period Mr. Pearson expected the AFRs to be entered. Nevertheless, Mr. Pearson neither criticized Mr. Bledsoe for his failure to enter AFRs nor his failure to file weekly reports. Moreover, the record is entirely silent as to any reason for Mr. Bledsoe's failure to complete his AFR assignment before August 22, 1995. By contrast, the record shows that Mr. Hyde was given more

assignments by Mr. Pearson than Mr. Bledsoe; that Mr. Pearson placed deadlines on all four of Mr. Hyde's assignments, but none on the three assignments to Mr. Bledsoe and, in addition, Mr. Hyde was given a fifth high priority FOIA assignment by Mr. Owen on August 14; that Mr. Hyde had myriad Union obligations to perform while the record is silent as to any reason whatever that would have delayed Mr. Bledsoe promptly completing his May 17, 1995, assignment of contacting Regions or promptly completing his AFR assignment, but, although he did not complete the May 17 assignment until sometime before August 21 and his AFR assignment until August 22, Mr. Pearson never criticized, warned or threatened Mr. Bledsoe.

On September 11, Mr. Pearson gave Mr. Hyde another FOIA assignment and set a deadline of September 12, 1995. In addition, Mr. Pearson on September 11 instructed Mr. Hyde to transfer data files from his personal computer to a share drive. On September 12, Mr. Pearson refused to grant Mr. Hyde requested official time for two Union meetings until these two tasks had been completed. Mr. Hyde completed both and was then, still on September 12, granted official time.

Mr. Persaud had assignments other than those made by Mr. Pearson (Tr. 116). His work for the Secretary on the Hamilton Stores matter was of higher priority and extended over several months (Tr. 117, 118, 178) and his work on the LAN equipment and Internet operations for the office move also was of higher priority than the AFRs. Mr. Pearson stated that he, ". . . approached Mr. Persaud and told him that he does not have to worry about doing 25 AFRs per week, to just do his best, that this assignment [Hamilton Stores] takes precedence, and he acknowledged." (Tr. 178-179). But, Mr. Persaud stated that when Mr. Pearson mentioned the AFR assignment, ". . . he just laughed. That's what he did." (Tr. 117) (Emphasis supplied). In November, 1995, the AFR data was needed for a project and Mr. Yearout asked Mr. Persaud to enter his AFRs and he did so (Tr. 117, 118).

Obviously, Mr. Hyde was treated differently by Mr. Pearson than all other employees, as only he was given deadlines for work assignments. Mr. Pearson testified that,

"On August 3, I observed Mr. Hyde walking around the office talking to other employees and not particularly doing any work and certainly not entering in any annual financial reports. . . ." (Tr. 142, see, also, Res. Exh. 3, "August 3, 1995").

Therefore, he: a) gave Mr. Hyde a further assignment, with a deadline of August 25, 1995 (equestrian operations); and b) fixed deadlines for all of Mr. Hyde's other pending assignments as follows: AFRs, August 18; Yosemite, August 18; and Regions, August 4, 1995 (G.C. Exh. 14).

Mr. Yearout strongly maintained that Mr. Pearson's August 3 assignment of deadlines was, ". . . an acceptable workload, taking into account your responsibilities with the Union. . . ." (G.C. Exh. 20), and Mr. Pearson, with equal certainty asserted, "All time frames that have been set for completion of assignments have taken into account time required to perform your union activities" (G.C. Exh. 21). Accordingly, Respondent asserts that it did not treat Mr. Hyde in a disparate manner because of his Union activity and, conversely, that it had a valid reason for the discipline, namely Mr. Hyde's failure and refusal to comply with lawful orders of his supervisor to meet assigned work deadlines.

The great preponderance of the evidence is to the contrary and demonstrates that Mr. Pearson's deadlines were discriminatory, were pretextual and, were unlawful. Six days earlier when he had given Mr. Hyde the Yosemite assignment, Mr. Pearson had told Mr. Hyde "hang on to it for now . . . you can do it when its convenient." (Tr. 141); but on August 3 he fixed a deadline of August 18. At the same time, he set a deadline of August 18 for Mr. Hyde's AFRs, a deadline of the next day, August 4, for the "Regions" assignment and gave Mr. Hyde a new assignment with a deadline of August 25. All of this was done in spite of a conversation with Mr. Hyde on August 2 at which time Mr. Hyde had told him the AFR assignment posed a conflict because he, Hyde, had a week of annual leave coming up the next week and he had a deadline to respond to Respondent's reorganization plan. Despite Mr. Hyde's warning of a conflict on the AFRs, Mr. Pearson, the next day, proceeded to set deadlines for completion of all Mr. Hyde's assignments. This meant that Mr. Hyde had only the remainder of August 3 (Mr. Pearson's message was dated 10:18 am (G.C. Exh. 14)) and 4 and the week of August 14-18 to complete three assignments set forth in the August 3 message, bearing in mind that Mr. Hyde was on leave August 7-11. Without any time for Mr. Hyde's Union activity, the August 4 and August 18 deadlines were not attainable; but to further compound the matter and make it, truly, a "Catch 22" proposition, Respondent on Mr. Hyde's return from leave, on August 14, 1995, gave him a high priority, complex, FOIA assignment.

On August 4, as Mr. Pearson was by then out of town for an extended period, Mr. Hyde addressed his concerns, about the deadlines fixed by Mr. Pearson, to Mr. Yearout, Chief of the Concessions Program Division (G.C. Exh. 15), and Mr. Yearout promptly came to Mr. Hyde's office and told Mr. Hyde that there, obviously, was a problem and the three of them - Yearout, Pearson and Hyde - would get together on August 21, the first time all three would be in the office at the same time. Plainly, on August 4, Mr. Yearout recognized that Mr. Pearson's deadlines were unrealistic and, plainly, he assured Mr. Hyde that they would get together on the 21st and resolve the problem. But, without further discussion with Mr. Hyde, and wholly without recognition that Mr. Owen, as Acting Division Chief, had given Mr. Hyde a further, high priority, FOIA assignment on August 14, responded in writing on August 25, 1995, that, ". . . the work given to you by Mr. Pearson is an acceptable workload, taking into account your responsibilities with the Union. . . ." (G.C. Exh. 20), all of which demonstrates that Mr. Yearout's statement is pretextual.

Meanwhile, "back at the ranch", Mr. Hyde: completed the Yosemite assignment on August 17 (G.C. Exh. 16), the day before Mr. Pearson's deadline; completed the Regions assignment on August 18; and had substantially completed the FOIA assignment on August 18, although Mr. Pearson assumed responsibilities for putting the letter in final form on August 21. In addition, Mr. Hyde completed the equestrian inquiry on August 24, the day before Mr. Pearson's deadline; on August 24, 1995, in a letter to the Deputy Director of the Park Service, responded to the proposed reorganization; and during the week of August 21-24, met with the General Accounting Office, at their request. On August 22, 1995, Mr. Pearson, for the ostensible reason that, ". . . I was on travel and therefore unable to help you with your work, I will allow you until . . . August 25, 1995. . . ." (G.C. Exh. 18). Inasmuch as Mr. Hyde was off on Friday, August 25, Mr. Pearson's condescendence of August 22 was, in reality, a nullity.

Respondent's letter of reprimand of September 5, 1995, for failure to:

". . . complete the work assigned to you and directed to complete by August 25, 1995. In addition, on August 3, 1995, I requested that you provide Golden Gate NRA with some operational statistics. That assignment has not been completed either.

Your failure to complete assignments has put a strain on our branch and has hurt the morale of your co-workers. All time frames . . . have taken into account time required to perform your union activities . . . I, therefore, again instruct you to complete these assignments by c.o.b. September 8, 1995. . . ." (G.C. Exh. 21),

was both grossly inaccurate and misleading. As noted, Mr. Hyde had, as General Counsel also states (General Counsel's Brief, pp. 11-12), completed all of his assignments, including his work on the FOIA assignment of August 14, except the AFR assignment and, more important, Mr. Hyde was off August 25, under his compressed work schedule, and was on annual leave August 28-September 1; Monday, September 4, was a holiday, and Mr. Hyde was not back at work until September 5. Accordingly, under the further deadline of September 8, Mr. Hyde had only September 5, 6 and 7 as, under his compressed work schedule, he was off September 8.

On his return to work on September 5, Mr. Hyde found Deputy Director Reynolds' September 1, 1995, response to his August 24 letter (G.C. Exh. 24). The issuance of the letter of reprimand prompted Mr. Hyde's contacting the Authority concerning the matter and the following day, September 6, 1995, Mr. Hyde submitted a memorandum to Mr. Pearson informing him he would not be able to meet the September 8 deadline, because,

". . . While I recognize the right of management to assign work, this right must be tempered with my responsibilities to the bargaining unit members. . . .

"As a result of recent events. I will be preparing a Unfair Labor Practice Charge and a further response to the Director on the reorganization. These matters require my immediate attention and will undoubtedly take more than the two remaining workdays left this week. I will also be meeting in the near future with Labor Relations to discuss the ground rules for negotiating the reorganiza-tion. . . ." (G.C. Exh. 23).

Mr. Pearson responded by memorandum, also dated September 6 (G.C. Exh. 26), in which he, ". . . again instruct you to complete these assignments by c.o.b. September 8, 1995. . . ." In his memorandum, Mr. Pearson wholly ignored the fact that Mr. Hyde had not one but two

weeks of annual leave during August. On September 6, Mr. Hyde was extensively engaged in protected activity (G.C. Exh. 28), on September 7, 1995, Mr. Hyde wrote Mr. Roger Kennedy, Director of the National Park Service, concerning the reorganization, including his assertion that Respondent had not involved the Union in developing the reorganization plan and had not bargained with the Union on the details of the reorganization and, in addition, called to the Director's attention the, ". . . harassment of the union president (the under-signed). . . ." (G.C. Exh. 30). On September 8, 1995, Mr. Yearout also responded to Mr. Hyde's August 24 letter to the Deputy Director concerning the reorganization (G.C. Exh. 31). On September 11, Mr. Pearson gave Mr. Hyde another FOIA request and imposed a deadline of September 12, 1995. In addition, Mr. Pearson ordered Mr. Hyde to transfer data from his personal computer and refused official time requested by Mr. Hyde on September 12 until he complied with both assignments. Mr. Hyde did complete the FOIA request and the transfer of data and was granted official time on September 12.

On September 15, Mr. Pearson issued his proposed five-day suspension of Mr. Hyde, ". . . for your failure to complete assignments as instructed." (G.C. Exh. 32), i.e., assignments presented in his August 3 memorandum, by September 8. Mr. Pearson again asserted that, "Your failure to complete assignments has put a strain on our branch and has hurt the morale of your co-workers. . . ." (G.C. Exh. 32). This assertion was, and is, without basis. First, while it must be conceded that Mr. Hyde easily could have disposed of the "Regions" assignment in jig time, as he ultimately did, nevertheless, by completing this assignment on August 18, Mr. Hyde was still, insofar as the record shows, the first to complete the assignment (Messrs. Pearson, Bledsoe and Trimble completed this task before August 21, 1995, which I infer, from any more specific date, meant on, or about August 21). Second, Mr. Bledsoe did not complete his AFR assignment until August 22, 1995; and third, Mr. Persaud did no AFRs until November, 1995. Obviously, Mr. Pearson's gratuitous comment about "strain" and "morale" was fabricated out of thin air and must be dismissed as pure self-serving gibberish.

Mr. Pearson discriminated against Mr. Hyde by setting deadlines for all of his work because of his Union activity and imposing no deadlines on any other employee. Mr. Pearson indicated that he imposed deadlines on Mr. Hyde on August 3 because he was, ". . . walking around . . . talking to other employees and not particularly doing any work and certainly not . . . any annual financial reports. . . ." (Tr. 142). The grossly discriminatory

treatment of Mr. Hyde is dramatically shown by Mr. Pearson's assignment records. Mr. Pearson had made three assignments to Mr. Bledsoe: a) the common, May 17, 1995, task of contacting Regions; b) a June 8, 1995, assignment, completed July 28; and c) the July 31 AFR assignment. With only one assignment after July 28, Mr. Bledsoe did nothing but was not criticized nor were deadlines set for his completion of the two assignments, namely contacting Regions (which he did not complete until on, or about August 21), and 50 AFRs (which he did not complete until August 22). In like manner, Messrs. Trimble and Persaud had also been given the May 17 assignment to contact Regions; neither completed the assignment until on, or about, August 21; but neither was criticized nor was a deadline imposed for their completion of the task.

Not only was the imposition of deadlines only for Mr. Hyde's work assignments discriminatory, but the deadlines were further discriminatory because they were unattainable. As noted, Mr. Pearson consistently ignored the fact that Mr. Hyde was on annual leave August 7-11. Further, when Mr. Hyde returned from leave on August 14, he was given a complex, high priority, FOIA assignment by Mr. Owens which occupied much of his time the week of August 14-18 (Tr. 41, 44, 45). Nevertheless, Mr. Hyde completed the "Regions" assignment on August 18, the Yosemite assignment on August 17 and had compiled the data for the FOIA response. As August 18 was the deadline set by Mr. Pearson on August 3, Mr. Hyde could not have completed the AFRs even without his Union activities. After the fact, Mr. Pearson on August 22, 1995, extended the deadline for the AFRs to August 25. During the week of August 21-24 (Mr. Hyde was off August 25), Mr. Hyde completed the equestrian inquiry on August 24; met with the General Accounting Office, at their request, to discuss special accounts (Tr. 97) (a duty not recognized by Mr. Pearson - see, Res. Exhs. 2, 3); was heavily involved in Union activity, including, albeit tardily, the response to Respondent's proposed reorganization on August 24; and worked on the FOIA assignment (Tr. 47). Moreover, Mr. Bledsoe on August 21 and 22 was entering his AFRs on the computer and only one person may enter the data at the same time (Tr. 48). Consequently, Mr. Pearson's deadline of August 25 for completion of the AFR assignment was not attainable. As stated above, Mr. Hyde was on leave August 28-31 and September 1; September 4 was a holiday, and on September 5, Mr. Pearson issued the letter of reprimand for failure to complete the AFR assignment by August 25 and set a further deadline of September 8 (Mr. Hyde, under his compressed workweek schedule was off September 8, so he, actually had only through September 7 to complete his AFRs).

From September 5 through the 7, Mr. Hyde was engulfed by a flood of protected activity, including consulting with the Union about the reprimand (Tr. 54); consulting the Authority (Tr. 54); meeting with Mr. Pearson, accompanied by Union Vice President Watson (Tr. 57-58); Assistant Director Reynolds' partial response to Mr. Hyde's letter about the reorganization (G.C. Exh. 24); Mr. Hyde's letter of September 7 to Director Kennedy (G.C. Exh. 30) essentially set forth in Mr. Hyde's memorandum to Mr. Pearson of September 6 (G.C. Exh. 23. See, also, G.C. Exhs. 1(a), 30; Res. Exh. 3). The Agreement (Jt. Exh. 2, Art. 4), reflecting the mandate of § 31 of the Statute, 5 U.S.C. § 7131, provides, inter alia,

"Section 3. OFFICIAL TIME: The Union officers and representatives shall be authorized a reasonable amount of official time. . . .

. . . .

The determination of what constitutes a reasonable amount of official time for Union representation purposes will be determined based on the requirement that the expenditure of official time must be mutually beneficial to the Employer and its employees. . . .

. . . .

Section 6. . . . There shall be no coercion or discrimination against any Union official because of the performance of Union responsibilities. . . ." (Art. 4, Sections 3, 6).

Although not set forth above, Article 4, Section 3, plainly contemplates that if, or when, Respondent believes the use of official time would unduly interfere with agency operations or assigned duties, Respondent ". . . will consult with the Union in an effort to determine the proper course of action. . . ." (Jt. Exh. 2, Art. 4, Res. 3).

As the Authority has noted,

". . . Section 7131(d) 'carves out an exception' to management's right to assign work; otherwise, that right 'would preclude any . . . official time . . . since official time always affects an agency's ability to assign work' [American Federation of Government Employees, Council of Locals, No. 214 v. FLRA, 798 F.2d 1525 (D.C. Cir. 1985)] 798 F.2d at 1530-31 n.8. . . ." Military

Entrance Processing Station, Los Angeles,
California, 25 FLRA 685, 688 (1987).

Respondent did not show that Mr. Hyde's use of official time would interfere with accomplishment of the Agency's mission, cf., Federal Railroad Administration, 21 FLRA 508, 510 (1986). To the contrary, except for Mr. Pearson's arbitrary deadline, there was, neither as of August 25 nor September 8, 1995, no urgency to completion of the entry of AFRs. Mr. Bledsoe had not completed the entry to his 50 AFRs until August 22; and Mr. Persaud did not complete the entry of his 50 AFRs until November, 1995.⁹ Indeed, Respondent did not require completion of the AFR data until November¹⁰ and, at that time, Mr. Yearout told Mr. Persaud that Respondent then had a project for which the AFR data was needed and asked Mr. Persaud to complete the entry of his AFRs, which he did (Tr. 117).

Mr. Pearson not only arbitrarily imposed dates for Mr. Hyde's work but, at the same time, arbitrarily limited Mr. Hyde's official time. By "including" time for representational purposes in arriving at his deadlines and refusing to extend his September 8 deadline, Mr. Pearson was: a) imposing, impermissibly, an arbitrary limit on Mr. Hyde's official time, rather than the statutorily and contractually mandated "reasonable" amount of official time; and b) refused, contrary to its Agreement, to consult with the Union when Mr. Hyde, in writing, on September 6, informed him he could not meet the September 8 deadline and why. For the foregoing reasons, Respondent violated §§ 16 (a) (1), (2) and (4) of the Statute by its reprimand of Mr. Hyde on, or about, September 5, 1995, and by its suspension of him on, or about October 12, 1995, for five days because he engaged in protected activity. Respondent treated Mr. Hyde in a disparate manner by imposing the deadlines for his work performance; the deadlines imposed were arbitrary, capricious, discriminatory and pretextual; Respondent imposed arbitrary limitations on Mr. Hyde's use of official time; and Respondent sought to punish Mr. Hyde,

9

Strangely, while Mr. Pearson tasked himself, along with Messrs. Hyde, Persaud and Bledsoe, to enter 50 AFRs, the record does not show when he completed his entry of AFRs.

10

Mr. Hyde said, in effect, that the AFR data constitutes an important tool (Tr. 33; 103), in fact, he had developed the computer program and had, ". . . put the information in for basically 15 years . . . I'm the one who devised the system . . ." (Tr. 103); but the "tool" was not needed in August and September and the inputting of the data was work that could be done as time permitted (Tr. 104).

because he had engaged in protected activity, including the filing of unfair labor practice charges (G.C. Exhs. 1(a), 1 (b), 1(c); 2), by the imposition of arbitrary deadlines on the performance of his work including time for Union activity. 22nd Combat Support Group (SAC), March Air Force Base, California (hereinafter, "March AFB"), 27 FLRA 279 (1987); Social Security Administration, Inland Empire Area, 46 FLRA 161, 174 (1992).

For the reasons set forth above, I have found the deadlines imposed on Mr. Hyde's work performance, including his performance of Union activity, were unlawful. Therefore, his discipline for failing to meet those deadline was not for a lawful reason, and, accordingly, because,

" . . . the asserted reason for the [r]espondent's action was pretextual, this is not a case where both legitimate and improper motives are found which would require us to consider whether the [r] espondent would have acted as it did even absent the improper motive. In other words, it is not a 'mixed motive' case" Letterkenny Army Depot, 35 FLRA 113, 121 (1990) [quoting from March AFB, supra, 27 FLRA at 285, n.2]

Mr. Hyde was not disciplined because he did not complete the AFR assignment by c.o.b. September 25, 1995; rather, he was disciplined because he did not complete the assignment by September 8, 1995. Because, as I have found, the deadlines set for Mr. Hyde's work performance were unlawful, whether he completed the AFR assignment by September 25 is immaterial. As set forth above, I did not find convincing Mr. Hyde's testimony that he completed entering his 50 AFRs on Thursday, September 21 and I credited Mr. Pearson's testimony that Mr. Hyde did not tell him on Monday, September 25, 1995, that he had completed the entry of his AFRs. Moreover, it is undisputed that Mr. Hyde did not supply a list of AFRs he had entered, as he had been clearly instructed to do, until September 26, 1995, which completed his AFR assignment. I do not condone Mr. Hyde's failure and refusal to communicate properly with his supervisor on this occasion as well as others, including notification of completion of the equestrian inquiry; nevertheless, such failure of communication played no part in causing Respondent's unlawful action.

Having found that Respondent violated §§ 16(a)(1), (2) and (4) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Authority's 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 National Park Service shall:

1. Cease and desist from:

(a) Discriminating against Robert H. Hyde, or any other employee, because of the exercise of protected rights assured by § 2 of the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing 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) Rescind, revoke and withdraw from all personnel files of, or pertaining to, Mr. Robert H. Hyde the reprimand, dated September 5, 1995; the proposed suspension, dated September 15, 1995; and the suspension decision, dated October 12, 1995.

(b) Make whole Mr. Robert H. Hyde for all loss of pay, and any other right, privilege or benefit lost, due to the five-day suspension unlawfully imposed and in effect Monday, October 16, 1995, through Friday, October 20, 1995.

(c) Post at each office of the Concessions Division of the National Park Service, 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 Director of the National Park Service 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.

(d) Pursuant to § 2423.30, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director of the Washington Region, West End Court, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, 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: December 13, 1996
Washington, DC

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the National Park Service 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:

WE WILL NOT discriminate against Robert H. Hyde, or any other employee, because of the exercise of protected rights assured by § 2 of the Statute, 5 U.S.C. § 7102.

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

WE WILL forthwith rescind, revoke and withdraw from all personnel files of, or pertaining to, Mr. Robert H. Hyde the reprimand, dated September 5, 1995; the proposed suspension, dated September 15, 1995; and the suspension decision, dated October 12, 1995.

WE WILL, forthwith make whole Mr. Robert H. Hyde for all loss of pay, and any other right, privilege or benefit lost, due to the five-day suspension unlawfully imposed and in effect Monday, October 16, 1995, through Friday, October 20, 1995.

National Park Service

Date:

By:

(Signature) (Director)

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, Washington Region, West End Court, 1255 22nd Street, NW, Suite 400, Washington, DC 20037-1206, and whose telephone number is: (202) 653-8500.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case Nos. WA-CA-50682 and 60152, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Beatrice G. Chester, Esquire
Office of the Solicitor
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Susan L. Kane, Esquire
Michelle J. Ledina, Esquire
Federal Labor Relations Authority
West End Court
1255 22nd St., NW, Suite 400
Washington, DC 20037-1206

REGULAR MAIL:

Robert G. Hyde, President
National Federation of Federal
Employees, Local 2015
c/o National Park Service (680)
P.O. Box 37127, Suite 550
Washington, DC 20013-7127

Dated: December 13, 1996
Washington, DC