FEDERAL LABOR RELATIONS AUTHORITY OALJ 16-09
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE LUKE AIR FORCE BASE, ARIZONA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1547 CHARGING PARTY	Case No. DE-CA-14-0333

Julie M. Sheker
For the General Counsel

Phillip G. Tidmore
Ronald D. Veal
For the Respondent

Harley D. Hembd
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On March 19, 2014, the American Federation of Government Employees, Local 1547 (Union/Local 1547), filed an unfair labor practice (ULP) charge against the Department of the Air Force, Luke Air Force Base, Arizona (Respondent/Luke AFB). (G.C. Ex. 8). On April 13, 2015, the Acting Regional Director of the Denver Region of the FLRA issued a Complaint and Notice of Hearing alleging that the Respondent violated § 7116(a)(1) and (8) of the Statute by terminating dues allotments of two bargaining unit employees and therefore refusing to comply with § 7115(a) and (b) of the Statute. (G.C. Ex. 3). The Respondent

timely filed an Answer to the Complaint in which it admitted certain allegations and denied others, including the allegation that it violated the Statute. (G.C. Ex. 4). The Respondent asserted that the two employees in question had been promoted to positions outside of the bargaining unit. (G.C. Ex. 4).

A hearing in this matter was originally scheduled for June 23, 2015, at a place to be determined in Phoenix, Arizona. On May 29, 2015, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment (MSJ), shortly thereafter, the GC filed a Motion to Indefinitely Postpone Hearing. On June 5, 2015, the Respondent submitted a Response to Motion to Dismiss for Summary Judgment. On June 8, 2015, the Respondent filed an Opposition to Indefinite Delay. After review of the parties' motions, I issued an Order Indefinitely Postponing Hearing on June 10, 2015. The Order further stated that all parties could file any additional information by close of business on June 17, 2015. The Respondent filed a Supplemental Record Response with attached exhibits dated June 16, 2015. On June 19, 2015, the GC filed a Request to Consider Reply to Respondent's Supplemental Record Response, which I have granted.

SUMMARY JUDGMENT STANDARD

The Authority has held that motions for summary judgment filed under § 2423.27 of the Regulations serve the same purpose and are governed by the same principles as motions filed in the United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VAMC Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no "genuine dispute as to any material fact" and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In this matter, the General Counsel (GC) asserts that there is no dispute as to any of the material facts. The Respondent refuses to reimburse the Union for the dues the Union should have received from the time the Respondent improperly excluded two bargaining unit employees from the bargaining unit and stopped their dues allotments. The Respondent must reimburse the Union these dues from the time it improperly terminated the employees' dues allotments in March 2014 until the time the Respondent promoted the employees to the GS-09 Training & Curriculum Specialist positions in November 2014. The Respondent's actions are contrary to the Statute under well-established Authority precedent.

The Respondent asserts that there are material facts in dispute which make this matter inappropriate for summary judgment under § 2423.27 of the Authority's Regulations. Specifically, the Respondent asserts that there is an issue regarding whether either of the two employees at issue were in the bargaining unit during the relevant time period in this case. The Respondent asserts that both the Union and the General Counsel have refused to acknowledge or understand that the termination of the dues withholding allotments was required by Article XXIII, Section C, paragraph 2.b. of the parties' Labor-Management Agreement (LMA) and § 7115(b)(1) of the Statute. There is also an issue involving one of the employee's submitting a Standard Form 1188 on February 25, 2014, which the GC has failed to consider in its motion for summary judgment.

Based on the record as a whole, I find that there is no genuine dispute of material fact and that the record before me is sufficient to render a decision based on the MSJ, responses thereto, exhibits, and other pleadings filed by the parties. As such, a hearing in this matter is not necessary. I find that the Respondent violated § 7116(a)(1) and (8) of the Statute by refusing to comply with § 7115 of the Statute when it terminated the dues allotments of two bargaining unit employees.

FINDINGS OF FACT

The Respondent is an agency under § 7103(a)(3) of the Statue. (G.C. Exs. 3 & 4). At all times material, Bryan Evans occupied the position of Civilian Personnel Officer; George Amaya occupied the position of Labor Relations Officer and Ronald Veal occupied the position of Labor Relations Officer.[1]

The Union is a labor organization under § 7103(a)(4) of the Statue and is the exclusive representative of a unit of employees appropriate for collective bargaining at Luke AFB. (G.C. Exs. 3 & 4). The parties' collective bargaining agreement, Article I, Section B, states that "The bargaining unit to which this Agreement is applicable is composed of all eligible Air Force employees paid from appropriated funds and serviced by the Luke Air Force Base Civilian Personnel Flight except supervisors, management officials, professional employees, confidential employees and employees engaged in personnel work in other than a purely clerical capacity." (R.'s Supplemental Record Response (Supp. Resp.), Ex. 1 at 4).

On or about September 15, 2000, Dawn Johnson, an employee in Respondent's Child Development Center (CDC), completed a SF-1187 authorizing payroll deductions for Union dues. The Union submitted the SF-1187 to the Respondent for further processing. (G.C. Exs. 3, 12). On or about November 7, 2012, Rachael Freeman, an employee in Respondent's CDC, completed a SF-1187 authorizing payroll deductions for Union dues. The Union submitted the SF-1187 to the Respondent for further processing. (G.C. Exs. 3, 13). Respondent processed the SF-1187s for Dawn Johnson and Rachael Freeman and began remitting payroll deductions to the Union.

On November 15, 2013, Rachael Freeman was promoted to a GS-07 Training and Curriculum Specialist (TCS) in the CDC. (R. Ex. 3). This was apparently a newly created developmental position, with a journeyman grade level of GS-09. The Notification of Personnel Action generated by the Respondent coded the bargaining unit status of the position in block 37 as "7777", which, according to the Respondent, indicates that the

[1] The Respondent denied these assertions as set forth in paragraph 7 of the complaint. In its motion for summary judgment, the GC attached as exhibits various emails from the above individuals, which indicate their positions within the Respondent, as well as their ability to represent the Respondent on certain matters. I therefore find the evidence sufficient to show that the three individuals, Evans, Amaya and Veal, occupied the positions noted in the complaint, were supervisors or management officials of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and were agents of Respondent acting upon its behalf, at all material times. (G.C. Exs. 3, 4, 9, 10 & 11).

position is excluded from the bargaining unit represented by Local 1547. (R. Supp. Resp. at 3, 11 & 12). On November 17, 2013, Dawn Johnson was also promoted to a GS-07 TCS, with the same coding as described above. (R. Ex. 2; Supp. Resp. at 3, 11 & 12). Further, on November 16, 2014, both Freeman and Johnson were promoted to the GS-09 TCS position which continued to be coded "7777." (R. Exs. 4, 5).[2]

On February 25, 2014, Freeman signed a SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues. (R. Ex. 9). The Union refused to process the form, since she was outside the time period as set forth in the LMA. Freeman contacted Veal in mid-February, at which time he learned that she and Johnson had been promoted to non-bargaining unit positions that were coded as Bargaining Unit Status (BUS) Code 7777 which indicated they were professional level positions. Veal advised Freeman that because of the promotions, he did not need an SF-1188 to cancel her dues withholding allotment because it was covered by Article XXIII, Section C, ¶ 2.b. of the LMA and § 7115(b)(1) of the Statute. (R. Supp. Resp. at 3).[3]

On or about March 8, 2014, the Respondent terminated the dues allotments for Freeman and Johnson. The Respondent admits this action, and asserts that § 7115(b)(1) of the Statute and the parties' LMA, Article XXIII, Section C.2.b., required the Agency to cancel dues allotments since both employees were no longer in the bargaining unit when they were promoted from GS-5 to GS-7 TCS positions. According to the Respondent, since November 16, 2013, neither employee's position was included in the bargaining unit. (G.C. Ex. 4). General Counsel's Exhibit 6 is a remittance report for two pay periods, one ending 02/22/14 and the other ending 03/08/14. The report shows that Rachael Freeman and Dawn Johnson both had dues allotments withheld for the pay period ending 02/22/14, but not for the pay period ending 03/08/14. (G.C. Ex. 6).

On February 25, 2014, Local 1547 filed a petition with the Denver Region of the FLRA seeking to clarify its bargaining unit of appropriated fund nonprofessional employees at Luke AFB; specifically, to include in the unit the TCS GS-1701-07 (TCS) position, encumbered by Rachael Freeman and Dawn Johnson. (Case No. DE-RP-14-0017). The Respondent contended that Freeman and Johnson were excluded from the unit because they

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[2] In January 2014, the Respondent furnished a list of bargaining unit employees to Local 1547, as required by the parties' LMA. There are two lists with the same information, but in different formats. Neither Freeman nor Johnson are listed as bargaining unit employees, as of December 31, 2013. (R. Exs. 11 & 12).

[3] Article XXIII, Dues Deductions, Section C.2.b. of the parties' LMA states that the CSR (the Civilian Payroll Customer Service Representative) will terminate an allotment: b. When the employee leaves the unit by any type of separation, transfer or other personnel action, except detail. (R. Ex. 6). Section 7116(b)(1) of the Statute states: (b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when — (1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee . . . . (R. Ex. 6).

were professional employees under § 7103(a)(15) of the Statute. The Acting Regional Director issued a Decision and Order Clarifying Unit on November 28, 2014.[4] The Decision found that Freeman and Johnson were not professional employees within the meaning of § 7103(a)(15) and clarified the bargaining unit to include the position of Training and Curriculum Specialist, GS-1707-07. (G.C. Ex. 1; R. Ex. 7). The Respondent filed an Application for Review, which the Authority dismissed as untimely filed. (Case No. DE-RP-14-0017) (G.C. Ex. 2; R. Ex. 8).[5]

Following the Authority's Order, the Respondent initiated action to change the developmental GS-07 TCS position to be in the bargaining unit. By that time, however, neither Freeman nor Johnson were in the developmental position, both having been promoted to the GS-09 TCS position. (R. Supp. Resp. at 4, 11 & 12).

POSITIONS OF THE PARTIES

General Counsel

In November 2013, the Respondent promoted employees Rachael Freeman and Dawn Johnson to GS-07 TCS positions in the Respondent's Child Development Center. In February 2014, the Union filed a Petition with the Denver Region seeking to clarify the bargaining unit status of the GS-07 TCS position. On or about March 8, 2014, the Respondent removed Freeman and Johnson from the bargaining unit, and terminated their dues allotments, claiming that the GS-07 TCS position was excluded from the unit as a "professional" position. The Authority's regulations require that the parties maintain existing recognitions when a representation proceeding is pending, *see* 5 C.F.R. § 2422.34(a), and the Authority has consistently held that an agency acts at its peril in removing an employee from

[4] This Decision and Order Clarifying Unit dealt with Freeman and Johnson in the GS-07 TCS position. They were promoted on November 16, 2014, to the GS-09 TCS position. Local 1547 has since filed a petition with the Denver Region seeking to clarify its bargaining unit to include the GS-09 positions; that petition is currently pending before the Denver Region. (DE-RP-15-0009) (MSJ at 2, n.2).

[5] The Agency filed its application for review on January 29, 2015. The Authority issued an order directing the agency to show cause why the Authority should not dismiss the Agency's application as untimely. The Agency argued that it complied with the Regional Director's deadline for filing an application for review as set forth in the Decision and Order. The Authority issued its Order on February 23, 2015, dismissing the Agency's application for review. The Authority noted that it had previously dismissed applications as untimely in circumstances such as these, where a regional director has provided an incorrect due date. *See U.S. Dep't of VA, VA Med. Ctr., Hampton, Va.*, 64 FLRA 391, 391-92 (2010). The Authority further stated that "although this situation is regrettable, and the Authority certainly does not condone an FLRA employee providing incorrect information to a filing party, consistent with that precedent, the Authority dismisses the Agency's application here." (G.C. Ex. 2; R. Ex. 8).

a bargaining unit, because, if wrong, it commits a ULP by failing to comply with the requirements of § 7115(a) of the Statute. *Health Care Fin. Admin.*, 16 FLRA 390, 391-92 (1984) (*Health Care*); *Dep't of the Navy, Naval Underwater Sys. Ctr., Newport, R.I.*, 16 FLRA 1124, 1126 (1984) (*Navy*); *U.S. Dep't of the Treasury, U.S. Mint*, 35 FLRA 1095 (1990) (*U.S. Mint*).

The GC argues that the Respondent's defense that it had already determined that the GS-07 TCS position was not a part of the bargaining unit when it promoted the employees, should be rejected. By removing them from the bargaining unit, the Respondent argues that it was merely maintaining the existing recognition that had already determined that the position at issue was a "professional" position and outside the bargaining unit. The Respondent maintains that it was required to cancel Freeman and Johnson's dues allotments under § 7115b)(1), which provides that an employee's dues deductions shall terminate when the "agreement between the agency and the exclusive representative involved ceases to be applicable to the employee."

The GC asserts that the Respondent ignores the Regional Director's conclusion in his decision in Case No. DE-RP-14-0017. (G.C. Ex. 1). Respondent's argument attempts to evade the central undisputed fact in this case: that the GS-07 TCS position occupied by Freeman and Johnson was found to be in the bargaining unit. Therefore, the Respondent had no right to terminate the employees' dues allotments when they occupied that position.

An agency is obligated to honor employees' dues assignments from their effective date even when it questions the unit status of such employees. *Navy*, 16 FLRA at 1126. Section 7115(a) of the Statute requires agencies to deduct regular and periodic dues from employees' paychecks who request such deductions, subject to exceptions set forth in 7115(b). The Respondent contends that § 7115(b)(1) – which obligates an agency to cease dues withholding when the existing collective bargaining agreement is no longer applicable to the employees involved – allowed it to terminate dues withholding for Freeman and Johnson. However, § 7115(b)(1) does not apply here because both employees remained in the bargaining unit and the existing collective bargaining agreement continued to apply to them. When the employees' position is properly included within the unit, as was found here, it must follow that no termination of dues is justified without a revocation from the unit employee. *See Internal Revenue Serv., Seattle Dist.*, 12 FLRA 324, 336-37 (1983) (*IRS Seattle*). As the Region concluded that the position occupied by Johnson and Freeman remained a part of the bargaining unit, the Respondent acted at its peril and ignored the mandates of 7115 of the Statute by refusing to continue to honor the employees' voluntary written requests or dues allotments. Therefore, the Respondent violated § 7116(a)(1) and (8) of the Statute. *See U.S. Air Force, 2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 16 FLRA 872 (1984).

With regard to remedy, the GC requested that its proposed remedial order be granted, noting that its order is consistent with the relief ordered by the Authority in cases of this nature. *See IRS Seattle*, 12 FLRA at 324. When a respondent improperly excludes an employee from a bargaining unit and refuses to honor the employee's dues authorization, the Authority's remedy requires the respondent to reimburse the union the amount of dues equal

to that it would have received, but for the refusal of the respondent to honor the dues authorizations of the affected employee. *See U.S. Mint*, 35 FLRA at 1098, 1100; *see also Health Care*, 16 FLRA at 393. Despite the Region's determination that the GS-07 TCS position is in the bargaining unit, the Respondent refuses to reimburse the Union for the dues it would have received had the Respondent not improperly excluded Johnson and Freeman from the bargaining unit and stopped their dues allotments. The amount reimbursed will begin from the time the Respondent improperly terminated the employees' dues allotments in March 2014 until the time the Respondent promoted the employees to the position of GS-09 TCS in November 2014.

In addition to the customary posting of the Notice on bulletin boards, the GC requests that the Respondent be directed to distribute a copy of the Notice to all bargaining unit employees through Respondent's e-mail system. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

Finally, in response to an argument raised in the Respondent's Supplemental Record Response, that the doctrine of sovereign immunity prohibits the recovery of any Union dues from the Respondent in this case, the GC rejects that argument. The GC states that the Authority has held that sovereign immunity does not apply to allotments, such as union dues. When an agency deducts allotments from employee pay, the agency is viewed as a neutral and passive intermediary between the employee and the union. As such, an award ordering an agency to reimburse a union for payments it would have received, but for an agency's failure to process the withholding, does not constitute a monetary award against the government. *See U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Tucson, Ariz.*, 66 FLRA 517 (2012) (*FCC*); *see also AFGE, Local 2145*, 66 FLRA 911 (2012) (*Local 2145*).

Respondent

Citing to § 7115 of the Statute, the Respondent notes that an allotment for union dues ceases to be applicable when the employee is not covered or no longer covered by the parties' collective bargaining agreement. *IAM&AW, Lodge 2424*, 25 FLRA 194 (1987). For example, the termination of Union dues is warranted at any time when the employee is not covered by the parties' collective bargaining agreement. *IRS Seattle*, 12 FLRA at 324. Authority case law holds that it is not a ULP for an agency to terminate the dues allotment of an employee no longer in the unit. This termination of Union dues occurs when an employee is promoted. *IRS, Fresno Serv. Ctr., Fresno, Cal.*, 7 FLRA 371 (1981) (*IRS Fresno*), rev'd as to other matters sub nom. *IRS, Fresno Serv. Ctr., Fresno, Cal.*, 706 F.2d 1019 (9th Cir. 1983). *See Navy*, 16 FLRA at 1124.

The Respondent asserts that the motion for summary judgment wrongfully cites the employees' positions as GS-07 TCS as being in the bargaining unit. They were not in the unit when the Union filed the petition since the Union has never represented professional employees. (R. Ex. 1). Both employees were already in GS-07 TCS positions, with BUS Code 7777, and excluded from the bargaining unit per Article 1 of the LMA. Both employees were BUS coded 7777 positions starting November 17, 2013. The positions they

were promoted to were new positions that had never previously been included in the bargaining unit and excluded by the Statute and the parties' agreement. The list of bargaining unit employees provided to the Union pursuant to the LMA did not include either Freeman or Johnson as bargaining unit employees. These positions were not included in the bargaining unit until the FLRA Office of Publication and Intake ruled against the Respondent's application for review on February 23, 2015. At that time the developmental positions were included in the unit and not before. The Respondent's position is they could not have been in these positions as bargaining unit positions until the earliest on February 23, 2015; however, both took promotions to GS-09 TCS positions on November 16, 2014.

The Respondent raises the issue of sovereign immunity, noting that the United States, as a sovereign, is immune from suit except as it consents to be sued. *U.S. Dep't of Transp., FAA*, 52 FLRA 46, 49 (1996) (*FAA)* (citing *United States v. Testan*, 424 U.S. 392, 399 (1976)). The Authority has previously found that the remedial provisions of the Statute do not meet the strict test for waiver of sovereign immunity. Accordingly, the Authority will not award money damages that do not constitute pay, allowances, or differentials, without an express and unambiguous grant of authority to do so. *See INS, L.A. Dist., L.A., Cal.*, 52 FLRA 103, 106 (1996) (adopting *Dep't of the Army, U.S. Army Commissary, Fort Benjamin Harrison, Indianapolis, Ind., Dep't of the Army, Fin. & Accounting Office, Fort Sam Houston, Tex. v. FLRA*, 56 F.3d 273 (D.C. Cir. 1995). The burden is on the party alleging the waiver of sovereign immunity to set forth the statute allowing it. In *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Marion, Ill.*, 59 FLRA 811 (2004), neither the Union nor the Arbitrator pointed to any statute that would support a waiver of sovereign immunity in the circumstances of this case. In this regard, the Authority has explicitly held than an award of a grievant's personal medical expenses was precluded by sovereign immunity. *See FAA*, 52 FLRA at 46. The Authority therefore set aside the Arbitrator's award of money damages as contrary to law. Further, in *U.S. DOJ, Fed. BOP, Fed. Det. Ctr., Honolulu, Haw.*, 66 FLRA 858 (2012), the Agency claimed that the arbitration award was contrary to the doctrine of sovereign immunity because the Arbitrator provided not statutory authority supporting the award of damages. The Arbitrator did not cite any statutory basis for compensating the two grievants for alleged missed job opportunities due to the Agency's failure to timely investigate allegations of their misconduct or take any resulting disciplinary and/or adverse action. The Authority found the award of damages contrary to law and set it aside. *See SSA, Office of Disability Adjudication & Review, Region 1*, 65 FLRA 334, 338 (2010).

Thus, in this particular matter, there is no authority to require the Respondent to pay Union dues for positions that were never in the bargaining unit during the petition. Any remedy would be prospective as in a case where a Union is newly certified such as if the Union at Luke became certified to represent professional employees. By law, the remedial provisions of the Statute do not meet the strict test for waiver of sovereign immunity. In this case, the Respondent would not agree to any waiver and has no authority to do so. Moreover, the Union cannot recover any Union dues from the Respondent in this case by law.

ANALYSIS AND CONCLUSIONS

Section 7115 of the Statute authorizes an agency to deduct dues for an employee "in an appropriate unit" and provide that any such allotment terminates when agreement between the agency and the exclusive representative involved "ceases to be applicable." Thus, the Authority has held that it is not a ULP for an agency to terminate the dues allotment of an employee no longer in the unit. *IRS Fresno*, 7 FLRA at 371. In the case before me, the evidence establishes that the Respondent terminated the dues allotment of employees who were found to be in the existing bargaining unit.

The evidence reflects that this matter covers a limited period of time – from November 2013 when the employees were promoted to the GS-07 TCS position until November 2014 when the employees were promoted to the GS-09 TCS position. During that distinct period of time, the Respondent specifically refused to honor the existing dues authorizations of Freeman and Johnson, beginning in March 2014.

As stated above, the Denver Regional Director determined that the GS-07 TCS position was included within the existing bargaining unit and that determination became final and binding when the Respondent's exceptions were dismissed as untimely filed in February 2015. (*See* G.C. Ex. 2; R. Ex. 8).

The Respondent, however, continues to argue that the TCS position at issue was a professional position and excluded from the collective bargaining unit of nonprofessional employees. It only changed the classification of the position in February 2015, after the Authority dismissed its exceptions to the Regional Director's Decision and Order finding the position to be included in the unit, which also was after the two employees at issue, Freeman and Johnson, were promoted out of the developmental position and into the GS-09 position. The Respondent keeps insisting that the GS-07 position was outside the bargaining unit; however, the position was clarified in the representation process to be included in the bargaining unit. The Respondent's coding of the position as "7777" does not trump the eventual clarification of unit determination that the position is included in the existing bargaining unit. Further, a good faith belief concerning bargaining unit eligibility of an employee is not a defense; an agency acts at its peril if it refuses to process a valid request for dues withholding based on this belief. *See U.S. Mint.*

Navy, 16 FLRA at 1124, cited with approval by both the Respondent and the GC, involved two employees who executed written dues assignments which the agency refused to honor. The parties filed a joint Clarification of Unit petition regarding whether they should be included or excluded from the bargaining unit represented by the union. One of the positions was eventually withdrawn from consideration when the employee at issue had been reassigned to a supervisory position; the Authority issued its Decision finding that the other position was included in the bargaining unit. In this case, the Authority found that the subject employees were in the unit at the time the Respondent refused to honor the dues assignments. "The pendency of a petition filed to question the continued unit status of employees cannot negate management's obligation under [§] 7115(a) to honor valid assignments from their effective date." (*Id.* at 1125).

I find that the Respondent failed to meet its obligations under § 7115 of the Statute by terminating the valid dues assignments of Freeman and Johnson. Therefore, the Respondent violated § 7116(a)(1) and (8) by its conduct.

I do not find that Johnson's attempt to submit a SF-1188 to discontinue her dues affects the outcome of this matter. The evidence reflects (as referenced by the Respondent) that the Union did not process her SF-1188 and that Veal, as the Respondent's Labor Relations Officer, was given a copy of that document by Johnson, did not use that document in any way in the decision to discontinue her dues. Rather, he considered the document unnecessary in the Respondent's termination of dues because of his reading of the § 7115 of the Statute and Article XXIII of the parties' LMA.

With regard to the remedy in this matter, I reject the Respondent's defense of sovereign immunity. While the cases cited by the Respondent do deal with the issue of sovereign immunity, the Respondent did not address the case law in which the Authority has found that the specific matter of dues to certified bargaining representatives did not fall under sovereign immunity. Specifically, the Respondent did not mention the Authority decisions in *FCC* and *Local 2145*. In those cases, the Authority specifically stated that when an agency deducts allotments from employee pay, the agency is viewed as a neutral and passive intermediary between the employee and the union. As such, an award ordering an agency to reimburse a union for payments it would have received, but for an agency's failure to process the withholding, does not constitute a monetary award against the government. I reject the Respondent's reliance on sovereign immunity to avoid the required remedy in this matter.

Based on the record evidence, I find that the Respondent violated § 7116(a)(1) and (8) of the Statute by terminating the dues withholding of bargaining unit employees Rachael Freeman and Dawn Johnson.

REMEDY

I find that the GC's request that the Notice be distributed by email and a physical positing, to be an appropriate remedy in this matter. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014). Further, I find that the Respondent should reimburse the Union in an amount equal to the regular and periodic dues it would have received from the pay of Dawn Johnson and Rachael Freeman, but did not receive as a result of the unlawful refusal to honor their valid written allotments for such purpose. The amount reimbursed will begin from the time the Respondent improperly terminated the employees' dues allotments in March 2014 until the time the Respondent promoted the employees to the position of GS-09 Training & Curriculum Specialist in November 2014. *See FCC* and *Local 2145.*

CONCLUSION

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Luke Air Force Base, Arizona, shall:

1. Cease and desist from:

(a) Refusing to comply with the provisions of § 7115 of the Statute by refusing to honor valid written dues authorizations from Dawn Johnson and Rachael Freeman, or any other unit employee, for the payment of regular and periodic dues to the American Federation of Government Employees, Local 1547 (Union).

(b) Interfering with, restraining, or coercing bargaining unit employees by refusing to honor valid written dues authorizations from Dawn Johnson and Rachael Freeman, or any other bargaining unit employee, for the payment of regular and periodic dues to the Union.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Reimburse the Union, in an amount equal to the regular and periodic dues it would have received from the pay of Dawn Johnson and Rachael Freeman, but did not receive as a result of the unlawful refusal to honor their valid written allotments for such purpose. The amount reimbursed will begin from the time the Respondent improperly terminated the employees' dues allotments in March 2014 until the time the Respondent promoted the employees to the position of GS-09 Training & Curriculum Specialist in November 2014.

(b) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of Luke Air Force Base, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where Notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Disseminate a copy of the Notice signed by the Commander, through the Respondent's e-mail system to all bargaining unit employees. This Notice will be sent on the same day, that the Notice is physically posted.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., November 19, 2015

Susan E. Jelen

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of the Air Force, Luke Air Force Base, Arizona, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to comply with the provisions of § 7115(a) of the Statute by improperly terminating the valid written dues authorizations of GS-07 Training & Curriculum Specialists or any other bargaining unit employees.

WE WILL NOT refuse to honor valid written dues authorizations from Dawn Johnson and Rachael Freeman, or any other bargaining unit employee, for the payment of regular and periodic dues to the American Federation of Government Employees, Local 1547 (Union).

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of the rights assured them by the Statute.

WE WILL reimburse the Union, in an amount equal to the regular and periodic dues it would have received from the pay of Dawn Johnson and Rachael Freeman, but did not receive as a result of the unlawful refusal to honor their valid written allotments for such purpose.

WE WILL deduct regular and periodic dues from the pay of any unit employee who makes voluntary assignments for such purpose, and make an appropriate allotment of such dues to the Union.

_____
(Agency/Respondent)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Blvd., Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.