

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

MEMORANDUM

DATE:

September 25, 2007

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
TAMPA AIR TRAFFIC CONTROL TOWER
TAMPA, FLORIDA

Respondent

AND

No. AT-CA-07-0210

Case

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
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DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
TAMPA AIR TRAFFIC CONTROL TOWER
TAMPA, FLORIDA

Respondent

AND

Case No. AT-CA-07-0210

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

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NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Chief 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. § 2423.34(b).

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

Any such exceptions must be filed on or before **OCTOBER 29, 2007**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: September 25, 2007
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
TAMPA AIR TRAFFIC CONTROL TOWER
TAMPA, FLORIDA

Respondent

AND

Case No. AT-CA-07-0210

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Paige A. Sanderson, Esq.
For the General Counsel

Kem L. Parton, Esq.
Kishaw W. Griffin, Esq.
For the Respondent

Sandra Riviers, Esq.
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), and the revised Rules and Regulations of the Federal Labor Relations Authority (Authority).

A Complaint and Notice of Hearing issued on May 17, 2007,

based upon an unfair labor practice charge filed on February 5, 2007 by the National Air Traffic Controllers Association, Tampa Tower Local (Union), against the Federal Aviation Administration, Tampa, Florida (Respondent). The Complaint alleges that the Respondent failed to comply with

§7114(a)(2)(B) of the Statute by: (1) holding investigatory examinations of at least eight bargaining unit employees; (2) the employees reasonably believed the examinations might result in disciplinary action against them; and (3) denying the employees Union representation when the employees requested such representation, and thereby violated §7116(a)(1) and (8) of the Statute.

A hearing was held in Tampa, Florida, on July 10, 2007, at which time all parties were represented and afforded a full opportunity to be heard, produce relevant evidence, and examine and cross-examine witnesses. Counsel for the Respondent and the General Counsel filed timely post-hearing briefs.

Based on the entire record, including my observation of the witnesses and their demeanor, and the evidence, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency under §7103(a)(3) of the Statute. Ex. GC-1(f). The Union is a labor organization within the meaning of §7103(a)(4) of the Statute. Ex. GC-1(f). The Union is the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent's facility. Ex. GC-1(f).

On or about September 5, 2006, a personal vehicle belonging to the Air Traffic Manager (Manager) at the Tampa Tower facility was vandalized by someone who released the air from two tires while it was parked in the Tampa Tower parking lot. Ex. R-1(d), (e). In late December of 2006, a second incident related to the same Manager occurred when someone vandalized the urinals of the men's restroom at the Tampa Tower facility by fouling them with laminated pictures of the Manager. Ex. R-1(d), (e), T-55. In January 2007, the agency dispatched Percy L. Freeman, an investigator special agent assigned to its Security and Hazardous Material Division in Washington, D.C., to conduct an investigation of the two incidents and to produce a formal Report of Investigation (ROI). T-68.

In the course of his investigation, special agent Freeman developed leads and identified employees whom he thought had access, opportunity and motive to commit the two acts. T-56.

Based upon information provided by the security personnel, he determined that Patrick McCormick, President of the Union local was a suspect in the tire deflation incident. T-69. However, he had no leads with respect to the placing of laminated pictures of the Manager in the urinals. T-69. Thus, he decided to conduct investigatory examinations with bargaining unit members who were on shift the day the pictures were discovered in the urinals.^{1/} T-69, 70. Special agent Freeman testified that he examined 34 employees in the course of his investigation and that the majority were bargaining unit members. T-56, 57. Of that number, only one was allowed to have a Union representative at his examination. T-57 to 60. At least four of the bargaining unit members Paschal, Formoso, Parshook and Buchovich requested union representation at their examination. T-22, 42, 59, 60. Some of the employees also asked Freeman to execute a statement documenting their request, its denial, and that their participation was the result of an order to do so. T-46, 47; Ex. R-1(f).

These investigatory examinations were conducted by special agent Freeman at the Tampa Tower facility in a private office away from the employee's workspace. T-21, 40. The examinations were conducted under oath and resulted in signed, sworn statements from the employees examined. R-1(a), (b), (c), (d), (e). While the employees were told that they were not a subject of the investigation, they were also told that they could become the subject depending upon what he discovered. T-41. The testimony of Mark Paschal regarding this statement was not contradicted by special agent Freeman, and in fact, it is consistent with Freeman's own testimony concerning how he conducted the investigation and with the uncontradicted testimony of Leon Parshook, who indicated that Freeman told him he would stop the interview and allow him to get representation if he thought he needed it as a result of his responses. T-22. Furthermore, the employees examined by special agent Freeman were not told, nor given any oral or written assurance that they would not be disciplined as a result of the investigatory examination. T-25, 34, 46. The two employees who testified at the hearing confirmed that they were instructed by superiors to participate in the investigatory examination, that they requested a Union representative near the start of the examination and that

^{1/} Special Agent Freeman offered no explanation or justification for his assumption that bargaining unit employees would have motive, by virtue of that status.

those requests were denied by special agent Freeman. T-22, 42. However, the one employee who was a suspect in the tire deflation incident was afforded Union representation by the investigator at the time of his interview. T-57.

The ultimate purpose of this investigation was the creation of a formal report of investigation which the Respondent could use in a disciplinary or administrative action against the employee(s) responsible for the incidents. T-69, 76. In fact, the Respondent subsequently made it known to the employees that if the investigation conducted by special agent Freeman did not result in discipline of the culprit responsible for the pictures, that another investigation would be conducted and that the discipline imposed after the second investigation would be more severe. Ex. GC-2. In preparation for his examinations, special agent Freeman prepared a list of questions to be asked of each examinee and each examination was conducted in the same manner. T-58; Ex. GC-3. Included in the questions to be asked of each employee examined about the two incidents was the question: "DID YOU DO IT?" Ex. GC-3, and special agent Freeman testified that any FAA employee who worked at the facility during the period of time when the pictures showed up in the urinals was a possible perpetrator. T-71, 72. At the hearing, special agent Freeman testified that had any employee admitted responsibility for the incidents he was investigating during their examination, they would have been subject to discipline. T-76.

DISCUSSION AND ANALYSIS

Position of the Parties

A. General Counsel and the Charging Party

The General Counsel contends that the evidence presented at the hearing demonstrates that at least two bargaining unit employees were subjected to an investigatory examination at which they requested union representation because they reasonably feared disciplinary action and that their requests were illegally denied. The General Counsel also argues that any testimony regarding FAA Order 1600.20(b) should be discredited because the actual Order was not introduced into the record.^{2/}

^{2/} The General Counsel's Motion To Strike said testimony is denied.

In support of its position, the General Counsel cites the fact that special agent Freeman was sent to the Respondent's Tampa Tower facility to conduct an investigation and that he conducted investigatory examinations of at least two bargaining unit members whose requests for union representation were denied. The General Counsel contends that the employees had a reasonable fear of discipline because their participation in the examination was required by a supervisor or management official, the examination was conducted in a private office by a special agent who presented a badge and official credentials, and that at least one of the employees was told that he could become a subject. Furthermore, both employees were asked during the examination if they committed the incidents under investigation, they had to execute signed and sworn statements regarding the information they provided during the examination, and neither was given any type of assurance that they would not be disciplined or proffered a grant of immunity.

B. Respondent

The Respondent asserts that its investigatory techniques have withstood *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975) (*Weingarten*) challenge, citing *Giove v. Dep't of Transportation*, 230 F.3d 1333 (Fed. Cir. 2000). RB-7. It further contends that this case turns upon the solitary question of whether the employees who were denied union representation had a reasonable belief, based on objective external evidence, that discipline could result from the examination. RB-8. Respondent argues that in the instant case, no objective external evidence to prompt a reasonable belief on their part exists. RB-9.

Discussion and Analysis

Was There a Statutory Right to Union Representation?^{3/}

Section 7114(a)(2)(B) of the Statute sets forth what is

^{3/} Prior litigation involving these parties indicates that contractual obligations related to such examinations may be more expansive than the Statute in that the Respondent may be required to advise an employee of their right to representation at the time of an examination. However, this case can be resolved based upon statutory rights without reference to any right provided by a collective bargaining provision.

commonly referred to as the "Weingarten" provision.^{4/} It describes the specific circumstances under which an employee has a statutory right to union representation. Under that provision, there are four elements that must be present for the right to attach. First, there must be an "examination" of the employee. Second, the examination must occur "in connection with an investigation". Third, the employee must "reasonably believe" that the examination may result in disciplinary action, and finally, the employee must request union representation. All four of these elements must be present before a statutory right to union representation attaches. See *American Federation of Government Employees, Local 1941, AFL-CIO v. FLRA*, 837 F.2d 495, 498 (D.C. Cir. 1988); *Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 29 FLRA 594, 602 (1987). As discussed below, all four elements were present in this case and I find that the Respondent committed an unfair labor practice when its agent, special agent Percy Freeman, refused to allow bargaining unit employees to have a Union representative present at their examinations.

1. These Were Examinations in Connection with an Investigation.

This case does not involve a supervisor engaging a subordinate in a run-of-the mill shop-floor conversation.^{5/} It involves formal examinations conducted by one of the Respondent's special agents who traveled from Washington D.C., to the Tampa Tower facility for the purpose of conducting the investigation. The investigatory process he used included the collection of signed and sworn statements from bargaining unit members who were on duty the day one of the incidents being investigated occurred. These employees were, in the testimony of special agent Freeman, employees with access and motive, and it was possible that any one of them could have been the person who placed pictures of the Manager in the men's urinals at the Tampa Tower facility. In the exact words of special agent Freeman, the employees he chose to examine were: ". . . those who had access, who may have had motive". T-56. The ultimate purpose of this investigation was the creation of a Report of Investigation which the agency could use for purposes of discipline or other administrative action. T-69, Ex. GC-2.

^{4/} Reflecting the Supreme Court's decision in the Weingarten case.

^{5/} See Weingarten at 964.

The Authority has found that an examination is "in connection with an investigation", if its purpose is "to obtain the facts" and "determine the cause" of an incident. *U.S. Immigration and Naturalization Service, U.S. Border Patrol, Del Rio, Texas*, 46 FLRA 363, 372 (1992). Thus, it appears that an agency must be attempting to "elicit answers to a work-related matter" by making specific inquiries such as who, what, when, and how. As special agent Freeman candidly admitted, that is exacting the type of information he was looking for when he went to investigate the incidents at the Tampa Tower facility. T-56. For good reason, Respondent does not contend that special agent Freeman was conducting anything other than examinations in connection with an investigation and I find that the examinations of bargaining unit members Leon M. Parshook and Mark C. Paschal were examinations in connection with an investigation.

2. Did the employees have a reasonable belief that disciplinary action might result from the examination?

It is undisputed by the parties that the "reasonably believes" element of section 7114(a)(2)(B) is an objective standard. The relevant inquiry is whether, in light of the external evidence, a reasonable person could conclude that disciplinary action might result from an examination. See, *Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Hartford District Office*, 4 FLRA 237 (1980) (*IRS Hartford*) *aff'd sub nom. Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Hartford District Office v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982) (*IRS*). See also *American Federation of Government Employees, Local 2544 v. FLRA*, 779 F.2d 719 (D.C. Cir. 1986) (*AFGE 2544*).

In *AFGE 2544*, the court held that:

The FLRA has consistently interpreted §7114(a)(2)(B) to say that a right to union representation exists whenever the circumstances surrounding an investigation make it reasonable for the employee to fear that his answers might lead to discipline. The possibility, rather than the inevitability, of future discipline determines the employee's right to union representation. See e.g., *Internal Revenue Service, Washington, D.C. v. Federal Labor Relations Authority*, 671 F.2d 560 (D.C. Cir. 1982), *aff'g*,

4 FLRA 237 (1980) (risk of discipline even though employee interviewed was not the subject of the investigation). . . .

The FLRA has also defined the "reasonably believes" requirement . . . as an objective standard. The relevant inquiry is whether, in light of the external evidence, a reasonable person would decide that disciplinary action might result from the examination.

AFGE 2544, 779 F.2d at 723-24 (emphasis in original).

Although federal sector labor law has nooks, crannies and gray areas in which close cases can arise, this case ventures into none of them. This is not a case where a special agent with dubious authority tried to grant an interviewee *de facto* immunity by stating he or she would not be subject to discipline, nor is it a case where a special agent legitimately and honestly believed that he was examining only those who were innocent witnesses to an event, and it certainly is not a case where a supervisor engaged an employee in work-related conversation. In fact, this case is very similar to the 1980 *IRS* decision, which represents the first time the Authority held that calling an examinee a third party or witness and telling him that he was not the subject of the investigation does not eliminate the statutory right to representation when he is examined.

In this case, a special agent assigned to conduct an investigation specifically for the purpose of preparing a report that could be used to punish the perpetrators of the two acts under investigation, conducted private examinations of employees identified by him as potential perpetrators of said acts because he determined they had access and motive. Under those circumstances, rare would be the individual who would not have some reasonable fear of discipline. Being identified as someone with access and motive to commit an act under formal investigation makes fear of possible disciplinary action entirely reasonable.

While the Respondent acknowledges that reasonable belief is to be assessed using objective review of the external evidence, the Respondent repeatedly ignores the meaning of that precedent by focusing upon the subjective, internal understanding of the person being examined. T-16, 17; RB-9. Respondent in essence argues that the objective review should

be limited to the internal information known to the examinee at the time he or she requests representation. However, that is not the test adopted by the Supreme Court in *Weingarten* and by the Authority in *IRS*.

Those cases made it clear that the inquiry into the reasonableness of an examinee's belief was to be made under all the circumstances of the case and not just those known to the examinee. *IRS Hartford* at 250. As those decisions recognized, focusing upon the subjective knowledge of the examinee would mean that the only person who could have a reasonable fear of discipline was the person guilty of the act being investigated. While such a standard may have certain benefits in terms of efficacy and appears to represent the Respondent's view of how it should be (RB-16 to 18), one is not required to confess guilt in order to prove that reasonable belief of discipline is present. *IRS Hartford* at 250. In fact, in reviewing *IRS Hartford*, the DC circuit rejected consideration of the employee's subjective belief and upheld the ALJ's exclusion of evidence related to the employee's state of mind purporting to show that the employee in fact, did not fear discipline. *IRS, 671 F.2d 560, 562-563 (D.C. Cir. 1982)*. Like the agency in *IRS*, the Respondent in this case argues that the signed and sworn statements executed by the examinees in which they proclaim no knowledge or involvement in the acts being investigated demonstrates that they could not have reasonably feared discipline as a result of their examinations. While those sworn statements were admitted to the record absent objection from the General Counsel, they have been given no weight in my decision because the subjective fear or lack thereof on the part of the person being examined is not the legal standard established by *Weingarten* and *IRS*.

At the hearing, special agent Freeman testified that it was standard practice to inform employees that he was conducting an administrative investigation and if they are not the subject of the investigation to inform them that they are not entitled to union representation. T-58. Despite the precedent discussed above, Respondent contends that its investigatory technique of denying representation rights to all examinees who are not subjects of an investigation has withstood *Weingarten* challenge, citing *Giove v. Dep't of Transportation*, 230 F.3d 1333 (Fed. Cir. 2000) (*Giove*). However, Respondent's reliance upon *Giove* is misguided for several reasons.

First, *Giove* involves the Federal Circuit's review of an arbitration decision related to federal employees which means it was reviewed using a deferential standard that requires the court to affirm the decision unless it is unsupported by substantial evidence, a lower standard of proof than preponderance of the evidence. Second, the issue before the arbitrator was whether the agency had violated the collective bargaining agreement by failing to give the employee notice of his right to union representation and not the exercise of a statutory right. In other words, *Giove* was about the failure to notify the employee of his right to representation as required by an agreement and not about refusing to honor a request for union representation that was actually made.^{6/} Although the union asserted that *Giove* was not afforded representation on three separate occasions, the arbitrator concluded that the only failure to notify occurred at an initial interview and that *Giove* was afforded representation on two subsequent occasions, whereupon, he declined to exercise his right both times. Thus, the arbitrator concluded the agency error in failing to give notice was harmless under the circumstances. *Giove* at 1340.

In reviewing the arbitrator's determination that *Giove* was not harmed because he was not entitled to notice and representation at the initial interview, the court held that it was reasonable to conclude that the Article 6, Section 1 notification of representation rights provision was not triggered during a general background investigation or preliminary investigation in which the agency is gathering facts. However, the court went on to hold that: "Only when the FAA has sufficient evidence to indicate that a disciplinary or potential disciplinary situation exists and to suspect one or more particular employees of committing the misconduct would union involvement be appropriate." *Giove* at 1341. In discussing the notice requirement in Article 6, Section 1 of the collective bargaining agreement, the court went on to say that two requirements must be met before notice must be given to an employee: "First, there must be employee misconduct subject to disciplinary or potential disciplinary action. Second, the employee or employees at the meeting must be among those suspected by the FAA of committing the

^{6/} The fact that the court was reviewing an arbitrator's contractual interpretation related to notice of the right rather than a decision based upon the statutory right to representation is highlighted by the fact that the Federal Circuit decision fails to discuss Weingarten or Authority precedent related to the statutory right to representation.

misconduct." *Giove* at 1342. Finally, for complete clarity, the court held:

". . . that the terms of Article 6, Section 1 of the CBA are triggered only when an investigation has moved to the stage where: (1) employee misconduct subject to possible disciplinary action is discovered, and (2) the employee being questioned, or about to be questioned, is suspected by the FAA investigator to be among those who may have engaged in such misconduct. It is only at that point that the FAA becomes obligated to notify the employee of the employee's right to union representation before questioning may take place."

The court in *Giove* was reviewing an arbitrator's interpretation of a contractual right and not an application of the Statute's right to representation. Thus, the decision contained no discussion of *Weingarten* or Authority precedent related to that statutory right and the assertion set forth in Respondent's Brief that the investigative technique of denying representation rights to all who are not subjects of the investigation had withstood *Weingarten* challenge is dubious at best. If anything, *Giove* makes it crystal clear that pursuant to the agreement under review in that case, being one among many possible suspects imposes not only a contractual right to union representation but an agency obligation to give notice of that right before initiating an examination.

Because the bargaining unit employees who were examined by special agent Freeman were selected specifically because he determined that they had access and motive, I find that his testimony that they were being interviewed as witnesses and not suspects preposterous, especially given the fact that his list of planned questions included the inquiry: "DID YOU DO IT?" These employees were examined because they had access and motive to commit the act and "considering" them a witness or third party was nothing more than a thinly veiled guise to deny them the right to representation. Such actions cannot be justified by administrative convenience or to avoid the use of official time, and if, as contended by the Respondent, administrative inconvenience and the use of official time is necessary to comply with the Statute when conducting an investigation, the requirement cannot be avoided by calling all of the possible perpetrators witnesses. Furthermore, if they truly are "non-suspect witnesses", any right to representation and its adverse consequences can be negated

with a valid grant of immunity by the appropriate agency official. *U.S. Department of Justice, Office of the Inspector General, Washington, D.C. and United States Immigration and Naturalization Service, El Paso, Texas*, 47 FLRA 1254 (1993). A bargaining unit employee's statutory right to representation turns upon an objective review of all the external facts and circumstances and not just what the special agent "considers" them. *IRS Hartford* at 250. In light of all of the external evidence, I find that Leon M. Parshook and Mark C. Paschal had a reasonable fear of discipline when ordered to undergo a formal examination by special agent Freeman.

3. There was a request for union representation.

The right to union representation under §7114(a)(2)(B) will affix itself only if a valid request for representation is made. *Norfolk Naval Shipyard, Portsmouth, Virginia*, 35 FLRA 1069, 1073-74 (1990) (*Norfolk*). The request must be sufficient to put the agency on notice of the employee's desire for representation, however, a request for union representation need not be made in a specific form in order to be valid. *Norfolk* at 1073-78.

It is uncontroverted that at least two of the employees who were ordered by management officials to report for an examination by special agent Freeman asked for union representation early in the examination. In fact, Respondent argues that their making the request early in the examination was a determining factor in the denial, and special agent Freeman testified that had the request come later in the examination after he asked them if they did it, the request would have been granted. T-78.

After those employees put special agent Freeman on notice that they desired union representation, Freeman had three choices: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice between continuing the interview without representation or having no interview at all. *Norfolk* at 1077. Freeman did none of the above, but instead told the employees that they were not subjects of his investigation and that they were not entitled to a union representative. However, Freeman did indicate that he would stop the examination and allow them to obtain representation if he thought it necessary later in the examination as a result of the responses they gave. Thus, I conclude that the record demonstrates that at least two valid requests for union representation were made of special agent

Freeman by bargaining unit members Leon M. Parshook and Mark C. Paschal.

Based upon the foregoing, I find by a preponderance of the evidence that the Respondent violated section 7116(a)(1) and (8) of the Statute when it held investigatory examinations of bargaining unit employees Leon M. Parshook and Mark C. Paschal without providing them with union representation, after it was requested. Accordingly, it is recommended that the Authority adopt the following:^{7/}

ORDER

Pursuant to §2423.41(c) of the Rules and Regulations of the Authority and §7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Transportation, Federal Aviation Administration, Tampa Air Traffic Control Tower, Tampa, Florida, shall:

1. Cease and desist from:

(a) Requiring any bargaining unit employee of the Tampa Air Traffic Control Tower, represented by the National Air Traffic Controllers Association, to take part in any examination in connection with an investigation, whether as a subject, suspect or as a witness, without union representation when such representation has been requested by the employee and it is reasonable to believe that the examination may result in disciplinary action against the employee

(b) Interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action:

(a) Establish that no information from the interviews of Leon M. Parshook and Mark C. Paschal conducted on or about January 2007 by FAA Investigator Percy Freeman was relied upon or will be relied upon so as to adversely affect any bargaining unit employee in the future; and that nothing has been retained in their personnel records as a result of

^{7/} Although testimony and documentary evidence indicates that Agency employees at the national level were involved in the decision making in this case, the General Counsel's request that the order be signed by the Director of Terminal Operations, is granted.

the interviews that could adversely affect them.

(b) Post at its Tampa, Florida facility copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms they shall be signed by the Respondent's Director of Terminal Operations, and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

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

Issued, Washington, DC, September 25, 2007

CHARLES R. CENTER
Chief 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 Transportation, Federal Aviation Administration, Tampa Air Traffic Control Tower, Tampa, Florida, 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 require any bargaining unit employee of the Tampa Air Traffic Control Tower, represented by the National Air Traffic Controllers Association, to take part in any examination in connection with an investigation, whether as a subject, suspect or as a witness, without union representation when such representation has been requested by the employee and it is reasonable to believe that the examination may result in disciplinary action against the employee.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL establish that no discipline to Leon M. Parshook or Mark C. Paschal occurred as a result of their interviews with Percy Freeman that took place on January 22 and January 25, 2007, respectively, and that the information from those interviews were not relied on or will not be relied on so as to adversely affect any bargaining unit employee in the future; and that nothing has been retained in their personnel records as a result of the interviews that could adversely affect them.

(Agency)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, whose address is: Federal Labor Relations Authority, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5300.

CERTIFICATE OF SERVICE

I hereby certify that copies of the DECISION issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-07-0210, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

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DATED: September 25, 2007
Washington, DC