

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

DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF TEXAS HOUSTON, TEXAS Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3966, AFL-CIO Charging Party	Case Nos. DA-CA-01-0725 DA-CA-01-0726

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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 3, 2002**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, N.W., Suite 415
Washington, DC 20424

RICHARD A. PEARSON
Administrative Law Judge

Dated: April 30, 2002
Washington, DC

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

MEMORANDUM

DATE: April 30, 2002

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF TEXAS
HOUSTON, TEXAS

Respondent

and Case Nos. DA-
CA-01-0725 DA-
CA-01-0726

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3966, AFL-CIO

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 is a Motion to Dismiss and other supporting documents filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 02-36
WASHINGTON, D.C.

DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF TEXAS HOUSTON, TEXAS <p style="text-align: center;">Respondent</p> and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3966, AFL-CIO <p style="text-align: center;">Charging Party</p>	Case Nos. DA-CA-01-0725 DA-CA-01-0726

Carol L. Catherman, Esquire
For the Respondent

Jeanell Nero-Walker, Representative
For the Charging Party

John M. Bates, Esquire
For the General Counsel, FLRA

Before: RICHARD A. PEARSON
 Administration Law Judge

DECISION ON MOTION TO DISMISS

On August 30, 2001, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing alleging that the Department of Justice, United States Attorney's Office, Southern District of Texas, Houston, Texas (Respondent), violated section 7116(a) (1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). The Respondent subsequently filed an Answer denying that it had violated the Statute.

On January 7, 2002, the President issued Executive Order 13252, which amended Executive Order 12171 and determined that the Statute cannot be applied to the United States Attorney's Offices in the Department of Justice in a manner consistent with national security requirements. The

Executive Order thereby excludes the United States Attorney's Offices from the Statute's coverage.

On January 11, 2002, the Respondent filed a Motion to Dismiss for Lack of Jurisdiction. The General Counsel did not respond to the substance of the Motion to Dismiss but instead requested that the hearing on the Complaint be postponed indefinitely. On January 22, 2002, the hearing was indefinitely postponed.

On April 25, 2002, the Authority issued its decision in another case involving the same parties, citing Executive Order 13252 and dismissing the complaint for lack of jurisdiction. 57 FLRA No. 163 (2002). For the same reasons cited by the Authority in that case, it is clear that the Respondent is not covered by the Statute and therefore, Respondent's Motion to Dismiss is hereby, Granted.

Based on the foregoing, I recommend that the Authority issue the following Order:

ORDER

IT IS ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, April 30, 2002.

RICHARD A. PEARSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case Nos. DA-CA-01-0725 & DA-CA-01-0726, were sent to the following parties:

CERTIFIED MAIL

CERTIFIED NUMBERS:

John Bates, Esquire	7000-1670-0000-1175-2973
Federal Labor Relations Authority	
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Dallas, TX 75202	

Carol Catherman, Esquire	7000-1670-0000-1175-3017
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Jeanell Nero-Walker, President
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REGULAR MAIL:

President
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80 "F" Street, N.W.
Washington, DC 20001

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: APRIL 30, 2002
WASHINGTON, DC