

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

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION SAFFORD, ARIZONA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2313  Charging Party	Case No. DE-CA-01-0349

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 her 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. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 29, 2002**, and addressed to:

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

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SUSAN E. JELEN  
Administrative Law Judge

Dated: March 28, 2002  
Washington, DC

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

MEMORANDUM  
2002

DATE: March 28,

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN  
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
SAFFORD, ARIZONA

Respondent

CA-01-0349

and

Case No. DE-

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2313

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

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges                      OALJ 02-30  
WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION SAFFORD, ARIZONA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2313  Charging Party	Case No. DE-CA-01-0349

Steven R. Simon, Esquire  
For the Respondent

Matthew L. Jarvinen, Esquire  
For the General Counsel

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION**

**Statement of the Case**

This case arises out of an unfair labor practice charge filed by the American Federation of Government Employees, Local 2313 (Union) against the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Safford, Arizona (Respondent), as well as a Complaint and Notice of Hearing issued by the Regional Director of the Denver Region of the Federal Labor Relations Authority (FLRA). The complaint alleged that the Respondent violated § 7116(a)(1) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.* (Statute) by its conduct in a meeting held on February 1, 2001.

A hearing in this matter was held in Tucson, Arizona on October 12, 2001. The parties were represented and afforded a full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses and file post-hearing briefs. Both the General Counsel and the Respondent made

oral arguments at the close of the hearing; the Respondent also filed a timely brief.

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

## **Statement of the Facts**

### **Background Information**

The American Federation of Government Employees, Council of Prison Locals (Council) is the exclusive representative of a unit of employees appropriate for collective bargaining at the Bureau of Prison (BOP). The American Federation of Government Employees, Local 2313 (Union) is an agent of the Council for the purpose of representing employees at the BOP, Federal Correctional Institution, Safford, Arizona (Respondent). (G.C. Ex. 1(b); Jt. Ex. 1; Jt. Ex. 2)

BOP and the Council are parties to a Master Agreement, effective from March 9, 1998 through March 8, 2001. (Jt. Ex. 1) Article 12 of the Master Agreement covers use of official facilities. Section c. states "The use of Employer bulletin boards, office space, and office equipment is negotiable at the local level. It is understood that such use of these items is expected to promote efficient labor management relations." (Page 31) The Safford, Arizona facility and Local 2313 negotiated a Supplement Agreement to the Master Agreement, with an effective date of April 8, 1999. (Jt. Ex. 2) Article 12, Use of Official Facilities, Section a, states: "The employer agrees to establish a GroupWise mailbox in which staff access to the mailbox is controlled by the Union President. The Union agrees that access to the mailbox will be provided to one management official designated by the Warden. Union members may utilize the LAN system to communicate with Union officials, within existing regulations."

The U.S. Department of Justice, Federal Bureau of Prisons issued a Program Statement, Number 1237.12, Information Resources Protection on April 14, 1999, which continues to be in effect. (R. Ex. 2) The purpose of the Program Statement is "To protect the Bureau's information resources from unauthorized use, misuse, and destruction." (Page 1) Section 5 contains the Responsibilities of Information and Computer Users and sets forth certain prohibitions with the use of these resources. This includes a.(5) which states:

Sending or forwarding E-Mail from or to government computers (attachments, photos, information, etc.), which could be determined offensive.

A. These may include, but are not limited to items or descriptions that are sexually explicit or degrading to any other person, as it relates to a person's gender, sexual orientation, race, creed, culture, etc.

The Respondent conducts Annual Refresher Training for all of its employees. Chuck Ornelas attended the week of January 22 through 26, 2001. (R. Ex. 1; Tr. 23) As part of the Refresher Training, Warden Berta Lockhart gave a presentation on each Tuesday morning of the scheduled training. (Tr. 24; R. Ex. 4)

#### **GroupWise message of January 29, 2001**

On Monday, January 29, 2001, at 12:23 pm, Chuck Ornelas, Union steward, sent the following message addressed to the SAF/Union (the GroupWise Union mailbox):

JUST A THOUGHT

ISN'T IT AMAZING THAT THE WARDEN TALKS ABOUT TEAM WORK AND KEEPING STAFF HAPPY, WORKING WITH STAFF.

BUT ON THE OTHER HAND SHE SPEAKS VOLUMES WITH HER ACTIONS.

FOR MORE INFO CONTACT A UNION REP.

(Jt. Ex. 3)

Ornelas testified that he sent out the GroupWise message after he found out that one of the local stewards had been denied annual leave requested for the purpose of going to school. This was not mentioned in his message. He also testified that he wanted to get feedback. (Tr. 15) There is no indication that he got any response, other than from Respondent, to his GroupWise message.

John Mayer, the Computer Services Manager, was appointed by the Warden, pursuant to the local supplement, to monitor the Union GroupWise mailbox. (Tr. 78, 79) He checked it on a weekly basis. After reading Ornelas' January 29, 2001 message, he thought it was disrespectful of the Warden and in violation of the Program Statement Number 1237.12 (R. Ex. 2) and gave a copy to the Warden.

(Tr. 81) He did not have access to delete the message and did not attempt to remove it. (Tr. 86)

### **February 1, 2001 meeting**

On February 1, 2001, when he reported to work, Ornelas was informed by his immediate supervisor, Steve Peru, that he was ordered to attend a meeting in the Warden's office and that he could take a Union representative. According to Ornelas, Peru asked him what he did to get the Warden mad. Ornelas contacted Jackie White, the Chief Steward. Both Ornelas and White reported to the Warden's office that afternoon. Already present in the Warden's office were Warden Berta Lockhart, Assistant Warden James Mitchell, Russell Seek, Controller and Ornelas' 2<sup>nd</sup> line supervisor, and Steve Peru, Services Supervisor. (Tr. 16, 17)

The testimony is consistent in that the meeting started when Warden Lockhart handed everyone a copy of the Ornelas GroupWise message of January 29, 2001. (Jt. Ex. 3) The versions of the meeting then diverge, although it is clear that the meeting only lasted a few minutes and that Warden Lockhart did most of the talking. (Tr. 18, 28, 88, 93, 94, 98, 107)

According to Ornelas, the Warden said this will be a one-way conversation. Ornelas interrupted and said he had his Union representative and they had the right to speak. Warden Lockhart then asked him what was the GroupWise message all about? She asked him if he was trying to gather a following and he said no. She then said the best way to keep your credibility with the Warden is to have a good relationship. Jackie White then asked what do you mean? The Warden then said, well that's going to be it. That's it. And you'll get it. The meeting ended and everyone got up. As they walked out the door, Jackie White said well, what do you mean by "get it"? The Warden said you will get it in writing. According to Ornelas, the meeting lasted no more than 5 minutes. (Tr. 18, 19)

Jackie White testified that she first saw the GroupWise message when the Warden gave it to her at the meeting on February 1, 2001. When she and Ornelas arrived, the Warden, Mitchell, Seek and Peru were already present. The Warden gave everyone a copy of the GroupWise message and said this is going to be a brief, one-way conversation. Ornelas interrupted the Warden and said he had a Union representative and if they had any questions, they would be asking them. (Tr. 27 - 29) The Warden then said "I know what you are trying to do. You are trying to gain a

following. And don't you know that the way that a Union official gains credibility is by having a good working relationship with management." White said she started to laugh. The Warden then said this meeting is over; that's it, we're done, and stood up. (Tr. 29) She went back to her desk. According to White, she and Ornelas approached the Warden's desk. White asked how can the meeting be over when I still don't even know what we're talking about here. The Warden then said "You're going to get it." She pointed her finger at White, who again laughed. Tr. 30) White asked, well, what am I going to get? And the Warden said you're going to get it in writing. The other management officials had already left and only White, Ornelas and the Warden were in the office at that time. The entire meeting took about 3-4 minutes. (Tr. 31-34)

James A. Mitchell, the Associate Warden, was at the meeting on February 1, 2001. He recalled the meeting lasting about 20 to 30 minutes. The Warden said that if this continues, meaning the GroupWise message, she would take the GroupWise mailbox from the Union. The Union said they didn't do anything wrong. (Tr. 88) He did not hear the Warden say anything like "you'll get it" during the meeting. He thought everyone left at the same time. (Tr. 90)

Russell Seek, the Controller, was also present at the meeting. He recalled that the Warden said this was going to be a one-way meeting and no one else was to talk. She explained the proper use of the GroupWise system was for Union business and this, meaning the message, was inappropriate to spread propaganda. (Tr. 93, 94) Ornelas tried to speak but the Warden refused to let anyone else talk. She said that's the end of the meeting. Seek left, and Ornelas and White were the last ones to leave. He did not hear the Warden telling White "you're going to get it" or anything like that. He thought the meeting lasted about 5 minutes. (Tr. 94, 95)

Steve Peru is the Services Supervisor and Ornelas' first line supervisor. He recalled that the Warden said this would be a one-way conversation. She said she did not think the GroupWise message was appropriate and didn't harbor good relations. Ornelas said that he had the right to talk. The Warden continued with her conversation that it (the GroupWise message) was inappropriate. Peru did not recall White saying anything. He did not hear the Warden say anything about "you'll get it", although it was possible after he left. (Tr. 98, 99)

Warden Berta Lockhart testified that there were restrictions to the use of the GroupWise mailbox by the Union and that management provided oversight and messages were to be based on factual information. (Tr. 100) At the meeting on February 1, 2001, she gave a copy of the GroupWise message to everyone. She told them it was not consistent with the use of the GroupWise mailbox, that it was an editorial intended to discredit her. She also said she could remove the Union's usage. She said she was not here to discuss the matter and the meeting ended. She testified that she did not say anything to Jackie White. She denied that she said anything like "you're going to get it" or "you'll get it in writing". (Tr. 107) She was concerned with the E-Mail because it might work against the Union/Management relationship. She never asked the Union to delete the message. She did not recall if she ever talked to the Union president about the message. (Tr. 112)

Neither Ornelas nor White ever received any type of disciplinary action. They never received anything from the Warden or other management official in writing. The Ornelas message was not removed from the Union GroupWise mailbox and the Respondent never requested that it be removed. The Union continues to have access to the GroupWise system.

## **Discussion**

### **Positions of the Parties**

#### **General Counsel**

Counsel for the General Counsel asserts that the Respondent has violated Section 7116(a)(1) of the Statute by the conduct of Warden Berta Lockhart in a meeting conducted on February 1, 2001 regarding the Union's use of the GroupWise E-Mail system. The General Counsel argues that Ornelas, in his capacity as a Union steward, was engaged in protected activity when he sent the GroupWise message. Specifically, use of the GroupWise mailbox was authorized by the parties' local supplemental agreement. The General Counsel further asserts that nothing in the Ornelas' message could be considered flagrant misconduct which would remove his actions from protected activity. The message did not contain any profanity and appears fairly tame in comparison with other language that the Authority has found protected. See *U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, D.C.*, 55 FLRA 875 (1999) (*FSIS, Washington, D.C.*); *Bureau of Indian Affairs, Isleta*

*Elementary School, Pueblo of Isleta, New Mexico, 54 FLRA 1428 (1998) (Isleta Elementary School).*

The General Counsel then argues that the statements and conduct of Warden Lockhart at the February 1, 2001, interfered with, restrained and coerced both Ornelas and White in their protected activity. With regard to the content of the February 1 meeting in the Warden's office, the General Counsel argues that the testimony of Ornelas and White should be credited over the management witnesses, noting that their testimony was essentially consistent. The General Counsel also noted that Ornelas' immediate supervisor had asked him what he had done to get the Warden mad at him, there were four levels of management at the meeting, and Ornelas was offered Union representation for the meeting. The meeting was not simply to advise the Union that its access to the GroupWise message system would be removed if such messages continued. In all, the coercive questioning of Ornelas regarding the message interfered with his exercise of protected activity. The "get it" comment was an ominous threat which also interfered with White's protected activity.

### **Respondent**

The Respondent argues that the Ornelas' GroupWise message was a gratuitous insult directed at the Warden and did not set forth any specific labor/management issue to be resolved. The timing was also particularly egregious, since it was issued the evening before the Warden's early morning presentation at the annual refresher training. The Respondent argues that it has the right to bring violations of the contract to the attention of the Union and that was precisely what the meeting at issue was about. *U.S. Penitentiary, Florence, Colorado, 54 FLRA 30 (1998)* and *Federal Election Commission, 20 FLRA 20 (1985)*. The Respondent denies that the Warden said anything at the meeting which interfered with, restrained or coerced employees in the exercise of their rights under the Statute.

The Respondent further argues that the Ornelas' message was not consistent with the negotiated purpose of the use of the GroupWise system. Associate Warden Jeff Wrigley was the Respondent's chief negotiator for the local supplement agreement and testified that he had expressed concerns over the Union's use of the GroupWise mailbox, particularly that the Union would use it to express grievances, complaints and criticisms of management. During the negotiations, he testified that the Union stated that it was not their intent to use it as a forum to criticize management, although he

also acknowledged that this is not expressed in the final agreement. (Tr. 37, 48) The Union did agree that management could have a monitoring capability. (Tr. 38)

### **Analysis**

The complaint alleges that the Respondent violated section 7116(a)(1) of the Statute by the following:

16. During the meeting described in paragraph 14, Lockhart questioned Ornelas about the electronic bulletin board message described in paragraph 13 and told Ornelas words to the effect that the "groupwise" system was not for editorializing; and that the best way for a Union official to gain credibility is by maintaining a good relationship with the Warden. When White asked Lockhart what she was talking about, Lockhart responded that she was not going to talk about it and White was going to "get it."

The first issue to be determined is whether or not Ornelas was engaged in protected activity when he sent a message to the Union GroupWise mailbox on January 29, 2001. The local supplement between the Respondent and the Charging Party allows use of the GroupWise system for the Union, with Article 12, Section a, specifically stating "The employer agrees to establish a GroupWise mailbox in which staff access to the mailbox is controlled by the Union President. The Union agrees that access to the mailbox will be provided to one management official designated by the Warden. Union members may utilize the LAN system to communicate with Union officials, within existing regulations." No other specific

restrictions are placed on the Union's use of the GroupWise system.<sup>1</sup>

Chuck Ornelas sent the GroupWise message on January 29, 2001 in his capacity as the Union steward. There is no evidence that he did not have the authority as a Union steward to utilize the GroupWise system. Since he was engaged in activity that had been set forth in the parties' local supplement agreement, I find that his sending the GroupWise system message was protected activity under the Statute. *U.S. Department of Labor, Employment and Training Administration, San Francisco, California*, 43 FLRA 1036 (1992) (assertion of a right set forth in a collective bargaining agreement is protected as a right to form, join, or assist a labor organization, within the meaning of section 7102 of the Statute.)

The question then becomes whether the actual language of the GroupWise message is so intemperate and outrageous to be flagrant misconduct and thus removed from the protection of the Statute. Section 7102 of the Statute guarantees employees the right to form, join, or assist any labor organization, or refrain from such activity, without fear of penalty or reprisal. *American Federation of Government Employees, National Border Patrol Council and U.S. Department of Justice, Immigration and Naturalization Service, El Paso Border Patrol Sector*, 44 FLRA 1395, at 1402

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Although Associate Mitchell's testimony regarding the negotiations was limited in its detail, I did find it credible that he raised some concerns regarding the Union's ultimate use of the GroupWise system. I do not find, however, that the Union ever agreed not to use the GroupWise system for "editorializing". Such a restriction is not specifically set forth in the parties' final agreement. Further I did not find the Union's alleged notes (G.C. Ex. 2) from the negotiations helpful in this matter. The notes are not dated, initialed or signed by either party. While they do not include any discussion about limitations on the GroupWise mailbox by the Union (a matter the parties do not agree occurred), the notes also do not contain any discussion on the appointment of an Agency monitor (a matter the parties do agree was discussed and which is included in the final agreement.) The parties appear to have agreed to follow the Federal Bureau of Prisons regulations in this matter, as set forth in the parties' Master Agreement (Jt. Ex 1, Article 3, page 5). Therefore the Master Agreement, Local Supplement, and Program Statement Number 1237.12, Information Resources Protection (R. Ex. 2) all have input into the use of the GroupWise system. No other restrictions are set forth.

(1992) (*INS*). A union representative has the right to use "intemperate, abusive, or insulting language without fear of restraint or penalty" if he or she believes such rhetoric to be an effective means to make the union's point. *Naval Facilities Engineering Command, 45 FLRA at 155 (quoting Old Dominion Branch No. 46, National Association of Letter Carriers, AFL-CIO v. Austin, 418 U.S. 264, 283 (1984))* Consistent with section 7102, however, an agency has the right to discipline an employee who is engaged in otherwise protected activity for remarks or actions that "exceed the boundaries of protected activity such as flagrant misconduct." *U.S. Air Force Logistics Command, Tinker Air Force Base, Oklahoma City, Oklahoma and American Federation of Government Employees, Local 916, AFL-CIO, 34 FLRA 385, 389 (1990) (citation omitted)*. Remarks or conduct that are of such "an outrageous and insubordinate nature" as to remove them from the protection of the Statute constitute flagrant misconduct. *Naval Facilities Engineering Command, 45 FLRA at 156; Tinker AFB, 34 FLRA at 390*.

In determining whether conduct can be considered flagrant misconduct the Authority has set forth relevant factors in striking the balance between the employee's right to engage in protected activity and the employer's right to maintain order and respect for its supervisory staff on the jobsite: "1) the place and subject matter of the discussion; 2) whether the employee's outburst was impulsively designed; 3) whether the outburst was in any way provoked by the employer's conduct; and 4) the nature of the intemperate language and conduct." *Department of the Air Force, Grissom Air Force Base, Indiana, 51 FLRA 7 (1995) (Grissom Air Force Base)*. *FSIS, Washington, D.C., 55 FLRA 875 (colloquy between a management representative and union representative did not constitute flagrant misconduct)* and *Isleta Elementary School, 54 FLRA 1428 (Union representative's business card did not constitute flagrant misconduct)*.

Respondent asserts that the Ornelas GroupWise message of January 29, 2001 was offensive to the Warden and in violation of Program Statement Number 1237.12. All of Respondent's witnesses proclaimed they personally found the message offensive, although there was no clear explanation of why they thought this. Two of the witnesses thought that it could be found to relate to the Warden's sex or creed, but I do not find this interpretation to be supportable. A simple reading of the GroupWise message does not show any obscene or intemperate language. There is nothing that could be considered ". . . sexually explicit or degrading to any other person, as it relates to a person's gender, sexual orientation, race, creed, culture, etc." (Jt. Ex 2, page 3) While the language is not complimentary, criticism of a

management official, however distasteful to that official and other management personnel, does not necessarily remove the conduct from protected activity and in this case, does not in any way constitute flagrant misconduct. The language of the Ornelas' GroupWise message is milder than some of the language that the Authority has found to be protected. See, *Grissom Air Force Base, Indiana*, 51 FLRA 7; *INS*, 44 FLRA at 1402.

I therefore reject the Respondent's assertion that the GroupWise message cannot be considered protected activity.<sup>2</sup>

The next issue then turns on what exactly happened at the February 1, 2001 meeting. Although Ornelas had a Union representative at this meeting, it was clearly *not* called as an investigation into the GroupWise message. The Warden made it perfectly clear that this was a one-way conversation and she was not interested in what anyone else had to say. I therefore do not find that the Warden questioned Ornelas about his message, rather from his own words, she was merely asking rhetorical questions and was not expecting or wanting any response from him or his representative. The meeting lasted a short period of time, less than five minutes, by most accounts. I credit Ornelas' version of the meeting, corroborated in part by White and Parks and Seek.<sup>3</sup>

The question then becomes whether the language at the meeting amounted to a violation of the Statute. The legal standard for interpreting comments by agency officials under section 7116(a)(1) is set forth in *Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah*, 35 FLRA 891, 895-96 (1990):

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I have considered *Department of Defense, U.S. Army Reserve Command, St. Louis, Missouri*, 55 FLRA 1309 (2000), regarding the removal of two notices on the electronics bulletin board. The Authority agreed that the Respondent did not violate section 7116(a)(1) of the Statute by removing material which "plainly violated established Command Policy on the use of E-Mail," that prohibited the sending of "annoying, harassing, lewd or offensive material". 55 FLRA at 1315. Having found the Ornelas' GroupWise message to be protected activity, I find this case distinguishable.

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I find Chuck Ornelas' testimony the most complete and thorough. I was more impressed with his demeanor and responsiveness than any of the other witnesses. *Department of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 55 FLRA 1201, 1204 (2000) citing *Hillen v. Department of the Army*, 35 MSPR 453, 458 (1987).

The standard for determining whether management's statement or conduct violates section 7116(a)(1) is an objective one. The question is whether, under the circumstances, the statement or conduct tends to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement . . . . In order to find a violation of section 7116(a)(1), it is not necessary to find other unfair labor practices or to demonstrate union animus. . . . while the circumstances surrounding the making of the statement are taken into consideration, the standard is not based on the subjective perceptions of the employee or on the intent of the employer.

(Citations omitted). See also *U.S. Department of Agriculture, U.S. Forest Service, Frenchburg Job Corps, Mariba, Kentucky*, 49 FLRA 1020, 1034 (1994).

The tone of the meeting was established prior to its commencement. Ornelas' first line supervisor tells him to be at the Warden's office and to bring his representative. He then asks (according to Ornelas and not denied by Seeks) what did Ornelas do to get the Warden mad at him. And it is clear from the testimony that the Warden was "mad" at Ornelas. She appeared angry and was determined to be the only person talking. With four levels of supervision present, the overall tone of the meeting, the inability of the employee and his representative to ask questions or offer any explanation, clearly shows the meeting to be coercive in nature. While management does have the right to question employees regarding their actions, it must be careful not to do so in a threatening and coercive manner. In this case, I find that Warden Lockhart's actions violated section 7116(a)(1) of the Statute.

I further find that Warden Lockhart made comments to both Ornelas and White to the effect that they would "get it". Although the substance of this comment is unclear, Warden Lockhart's response to attempts by the Union to get further information, were clearly coercive. And the fact that nothing further was done to either employee or to the GroupWise Union mailbox does not alleviate the original threat itself.

Based on the record, I conclude that by its actions at the February 1, 2001 meeting in Warden Lockhart's office, the Respondent interfered with, restrained and coerced employees in their exercise of protected activity.

Accordingly, I conclude that Respondent violated section 7116(a) (1) of the Statute.

With regard to its requested remedy, the General Counsel asserts that an appropriate Notice To All Employees should be signed by Warden Lockhart, even if she should move to another institution by the time the Notice is to be posted. The General Counsel did not cite any cases in support of this remedy or set forth the purpose for this request. I therefore reject this request, although the Notice should be signed by the Warden at the Safford, Arizona facility.

It is therefore recommended that the Authority adopt the following order:

#### **ORDER**

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Safford, Arizona, shall:

1. Cease and desist from:

(a) Interfering with bargaining unit employees concerning the posting of messages on the Union's electronic bulletin board by meeting with employees to question them concerning such messages and by threatening employees with unspecified action during such meetings.

(b) In any like or related manner, 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 in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Post at its facilities at U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Safford, Arizona, where bargaining-unit employees 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 Warden, 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.

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

Issued, Washington, DC, March 28, 2002

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SUSAN E. JELEN  
Administrative Law Judge







Issued: March 28, 2002  
Washington, DC