UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: March 5, 1998

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Respondent

and Case No. WA-CA-70652

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 2830, AFL-CIO

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

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

DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS Respondent	
and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2830, AFL-CIO Charging Party	Case No. WA-CA-70652

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 6, 1998**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

ELI NASH, JR.
Administrative Law Judge

Dated: March 5, 1998
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS Respondent	
and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2830, AFL-CIO Charging Party	Case No. WA-CA-70652

Christopher Feldenzer, Esquire
Patricia Armstrong, Esquire
For the General Counsel

Harry Jones, Esquire
Eric Daniels, Esquire
For the Respondent

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

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

Based upon an unfair labor practice charge filed by the American Federation of State, County and Municipal Employees, Local 2830, AFL-CIO (AFSCME/Charging Party), against the U.S. Department of Justice, Office of Justice

Programs, Office of Juvenile Justice and Delinquency Prevention (Respondent),
a Complaint and Notice of Hearing was issued on November 21, 1997. The complaint alleges that the Respondent failed to comply with provisions of section 7114(a)(2)(B) of the Statute, by denying an employee the right to have a representative of the Charging Party present during an examination, in which the employee reasonably feared that disciplinary action would be taken against her, and thereby, violated section 7116(a)(1) and (8) of the Statute.

A hearing was held in Washington, DC, at which time all parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. Counsel for the Respondent and the Charging Party filed timely briefs.

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

Findings of Fact

Edith Lawrence, at all times material herein, was employed as a secretary in the Respondent's Training and Technical Assistance Division and is a member of the bargaining unit represented by the AFSCME, Local 2830.

John J. Wilson is a supervisor or management official under the Statute and was acting on behalf of the Respondent, at all times material herein.

On June 26, 1997[1], unit employee Lawrence engaged in an act of misconduct involving her then-supervisor, Frank Porpotage. On that day, Porpotage asked Lawrence to come into his office to counsel her about a derogatory e-mail message she had disseminated throughout the organization. During the course of this counseling session, Lawrence gave Porpotage "the finger." In response, Porpotage issued Lawrence a letter of reprimand on July 9, 1997, for disrespectful behavior. Upon receiving this letter of reprimand, Lawrence, in a loud voice and apparently in the presence of other employees, called Porpotage a "liar" and a "phony." The following day, she sent a disruptive e-mail message to all 700 employees in the Office of Justice Programs (OJP) describing, in derogatory terms, the events that had transpired.

---

[1] All dates are 1997, unless otherwise specified.

In response to the incidents of misconduct which occurred on July 9 and 10 respectively, Respondent's management, after some internal discussion, arrived at a decision to issue Lawrence a proposed 10-day suspension. During those internal management discussions, it was also determined that Wilson, as Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention, would issue the letter of proposed suspension.

On July 14, at approximately 4:00 p.m., Wilson requested Lawrence's presence in his office. Once there, he closed the door and presented Lawrence with the letter of proposed discipline and explained that the purpose of the meeting was for her to read the letter and to sign it, if she so chose. It is unchallenged that the meeting lasted approximately 45 minutes. It is also undisputed that Lawrence read the letter in short segments and provided Wilson with her observations relating to a number of perceived injustices she had suffered. Wilson did not engage in a dialogue with Lawrence, but instead, averted her comments and attempted to keep the meeting focused on the letter of proposed suspension. It is clear that Lawrence did, however, request representation at some point, but Wilson suggested to her that she seek counsel from the Union regarding the proposed suspension.

Analysis and Conclusions

1. Positions of the Parties

The issue to be decided here is whether Lawrence had a statutory right to union representation in accordance with section 7114(a)(2)(B) of the Statute.

Respondent contends that none of elements of section 7114(a)(2)(B) is present in this matter and, therefore, Lawrence did not have a statutory right to union representation when she met with Wilson on July 14. Accordingly, Respondent argues that since there was no statutory right to union representation, it did not violate section 7116(a)(1) or (8) by issuing the letter of proposed discipline to Lawrence without a union representative present.

The General Counsel contends that after all is said and done, it is clear that Wilson sought to solicit additional information and evidence to support the Respondent's action, as well as to see if Lawrence would deny such allegations. If this is so, then, it is urged that Lawrence's right to Union representation attached. *See Texaco*, Inc., 251 NLRB 633, 643 (1980)(*Texaco I*).

The General Counsel also contends that Respondent had not reached a final, binding decision concerning Lawrence's discipline at the time of the meeting. Accordingly, the suspension was a mere proposal, giving the agency the option to reduce, sustain, or set aside its proposal after Lawrence had answered. In the General Counsel's view, Wilson as evidenced by his questions, was still investigating the matter because Respondent did not investigate the incident prior to issuing the proposed suspension. Wilson testified during the proposal process, "Lawrence would have an opportunity to respond and provide her side of the story, if you will, and that was the way the facts were gathered so that a decision could be made." The General Counsel reads this to mean that Respondent had not concluded its investigation of the events or reached a final decision regarding the suspension. In the view of the undersigned, Wilson was talking about the entire disciplinary process and not the notification herein which simply set the disciplinary wheels in motion. Thus, Wilson testified, "that she had an opportunity under the procedures that were outlined to respond to the proposed suspension, that that was the appropriate forum to do that."

2. Lawrence Had No Statutory Right to Union Representation Under the Circumstances

Section 7114(a)(2)(B) of the Statute sets forth what is commonly referred to as the "Weingarten" provisions.[2] That section describes the specific circumstances under which an employee has a statutory right to union representation. Under section 7114(a)(2)(B), there are four elements which must be present for this right to union representation to attach. Thus, there is no absolute right to have a union representative present, even during a "Weingarten" investigation. The right is limited unless all four elements are met. 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 against her, 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,*

[2] These provisions reflect the Supreme Court's decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

California, 29 FLRA 594, 602 (1987). It is Respondent's position that the four sub-issues which form the broader issue clearly show that Lawrence was not entitled to union representation during the July 14, meeting. Respondent forges the sub-issues as follows: (1) whether there was an examination of Lawrence by Wilson during the meeting of July 14; (2) whether the meeting of July 14, was in connection with an investigation; (3) whether Edith Lawrence could have "reasonably believed" that disciplinary action may have resulted from the meeting; and (4) whether Lawrence requested union representation. For the reasons that follow, I find that Respondent did not fail to comply with section 7114(a)(2)(B) in violation of section 7116(a)(1) and (8) of the Statute. Therefore, it is found that Lawrence did not have a right to representation in this case.

a. There Was No Examination of Lawrence By Wilson During the July 14, Meeting

It has long been held by the Authority that a meeting which is conducted by management for the sole purpose of informing an employee of a decision that has already been reached is not an "examination" for purposes of section 7114 (a)(2)(B). *United States Air Force, 2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 9 FLRA 871 (1982). *See also Department of the Navy, Norfolk Naval Base, Norfolk, Virginia*, 14 FLRA 731, 749 (1984). This approach is consistent with the rulings of the National Labor Relations Board on this same issue. *See, Baton Rouge Water Works Company*, 246 NLRB 995 (1979)(*Baton Rouge*).

It is clear from the record in this case that the meeting of July 14, was conducted solely for the purpose of issuing Lawrence a letter of proposed suspension for prior misconduct. Wilson testified that during the period following the incidents of misconduct, internal management discussions were held to determine the appropriate course of action, and a "conclusion" was reached to issue a letter of

proposed suspension.[3] Wilson added that once the decision to propose the suspension was made, no further internal discussions occurred. As stated by Wilson, the sole reason for the meeting was to "present the proposed suspension in a private setting where she would have an opportunity to read it." Lastly, the evidence demonstrated that no defense offered by Lawrence or by a representative would have deferred Respondent from its proposed disciplinary decision in this case. *Texaco I.*

Wilson testified that he did not question Lawrence in any way during the course of the July 14, meeting, as the decision to issue the letter of proposed discipline was based on facts and evidence obtained prior to the meeting.[4] Although some conversation did occur, Wilson explained that this conversation was initiated and perpetuated by Lawrence. The fact that a conversation followed, which was initiated by the employee, after the letter of proposed discipline was issued does not automatically convert the meeting into an "examination" which would trigger Weingarten rights. *See Baton Rouge*, 246 NLRB at 997; *see also United States Air Force, 2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 10 FLRA 97, 108-09 (1982). A Weingarten right would attach only if the agency, after informing the employee of the

---

[3] While the decision to issue Lawrence a 10-day suspension was not final on July 14, the decision to propose such a suspension had been finalized in advance of the meeting. The purpose of the meeting, therefore, was merely to communicate that decision to Lawrence. This situation is clearly distinguishable from one where the employer has not made any disciplinary decision prior to the meeting. Under the latter set of circumstances, the NLRB has ruled that a Weingarten right would attach. *See, Henry Ford Health System*, 320 NLRB 1153 (1996). The instant circumstances are distinguishable, as a final decision to initiate the disciplinary process had already been made.

[4] In this regard, it would have served no purpose for Wilson to question Lawrence since Shay Bilchik--not Wilson-- was the deciding official on the discipline. Further, by providing Lawrence with the right to respond to the proposed discipline at a later date, Respondent seemingly recognized that there would be another, more appropriate, opportunity to question Lawrence about the incidents. Once a disciplinary decision has been made, it would seem that the disciplinary action shifts to the grievance procedure where Lawrence might have indeed needed a union representative. *Texaco I.*

disciplinary decision, sought additional facts or evidence in support of the action or attempts to have the employee admit his or her wrongdoing. Id. If, however, as in the instant case, some conversation occurs, but the agency is only concerned with the administration of discipline and is not seeking additional evidence in support of the disciplinary action, then no Weingarten right would attach. *Texaco, Inc.*, 246 NLRB 1021 (1979)(*Texaco II*). The determining question in these cases is whether the agency is concerned with the administration of discipline or whether it is seeking to obtain facts, evidence or an admission in support of the disciplinary action. *Baton Rouge, supra.* Case law thus reveals that an agency is not required to remain absolutely silent when presenting a proposal for discipline, but restraints are placed on what an agency can talk about in such situations. In my view, Respondent did not exceed those limits in the instant case.

Lawrence insists that the meeting was an interrogation by Wilson, but her own testimony disclosed that she, not Wilson initiated the discussion about her prior conduct. Lawrence set the course of the conversation because she,

> ". . . felt that he believed what was in that paragraph and it was important that I communicate to him that it was not completely true. So, because he had my fate in his hands, I decided to try to explain what happened." (Emphasis added).

There is no question that Lawrence also used the meeting as an opportunity to raise other complaints with Wilson, issues unrelated to the misconduct cited in the proposed suspension, but instead, involving a prior grievance over upward mobility and her perception that she had been treated unfairly by her superiors. Wilson's testimony supports a finding that it was indeed Lawrence who sought to explain the incidents on which the proposed discipline was based. He testified as follows:

> "Well, the way it proceeded was that as she would read the letter, she would stop reading it periodically and start explaining different things about the proposed discipline, about her history with her problems in the office and union representation, and so forth. She was trying to explain to me what her side of the issue was and trying to respond to the material that was in the memorandum."

Wilson stated that when he had the opportunity, he reminded Lawrence that the purpose of the meeting was for her to review the memorandum and sign it, and that under the

procedures outlined in the proposed suspension she would have a chance to do those things in the appropriate forum.

Lawrence also admittedly used the approximately one hour meeting to voice other complaints about mistreatment and perceived unfairness to her. A perusal of the record shows that Lawrence did think that Wilson was investigating the matter and she sought then and there to convince him that he should "squash the suspension." She obviously did not hear Wilson's instructions on what the next step would be in the matter.

It appears that the "questions" Lawrence insists were asked by Wilson were not questions but were, instead, statements or responses to questions asked by her. A review of the record shows that references to revoking Lawrence's access to e-mail, making an appointment to meet with Bilchik, and keeping the appointment with a psychologist were actions contained in the proposed suspension and not accusations which would require further evidence or an admission from Lawrence. It appears to the undersigned that Wilson was simply responding to Lawrence's observations and explaining what was required by the proposed suspension in the event Lawrence desired to contest the matter. Also, he seemed to be explaining his ability to revoke Lawrence's e-mail privileges and providing an alternative way for her to do her assignments. Thus, it is found that Wilson was not interrogating Lawrence but only answering issues that she raised during this somewhat lengthy conversation.

Based on the foregoing, it is clear that the meeting of July 14, was not an examination, as it was conducted solely for the purpose of issuing the letter of proposed discipline. Furthermore, the fact that a conversation ensued, which was initiated by Lawrence, does not convert the meeting into an examination and trigger the right to representation. Despite Wilson's advice to the contrary, Lawrence sought to explain her position on the proposed suspension, as well as on other matters. Her explanations however, do not raise this matter to the level of an "examination."

Accordingly, since no examination occurred, I find that the first element of section 7114(a)(2)(B) has not been met.

b. The July 14 Meeting Was Not "In Connection With an Investigation"

The second element necessary for a right to union representation to attach under section 7114(a)(2)(B) is that the examination must be "in connection with an

investigation." 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 management must be attempting to "elicit answers to a work-related matter" by making specific inquiries such as who, what, when, and how. Id.

As previously found, the meeting of July 14 was not an "examination." Further, the undersigned agrees with Respondent that the meeting was not "in connection with an investigation." Wilson testified that Respondent did not conduct any investigation into Lawrence's misconduct, but instead, held internal discussions to determine the most appropriate course of action.5 As a result of these discussions, Respondent arrived at its "conclusion" to issue a letter of proposed suspension prior to Lawrence's meeting with Wilson and, therefore, was not seeking any additional information from Lawrence, but was merely starting the disciplinary ball rolling. Thus, it appears that a final decision to discipline Lawrence was made prior to preparing the proposal for a 10-day suspension that was presented to Lawrence on July 14. This proposed suspension simply put Lawrence on notice that Respondent had already made its decision to discipline her. The proposed suspension therefore, moved the matter to the next level and offered the opportunity for reply; set a timetable for reply; and gave the opportunity for Lawrence to obtain a representative of her choosing. Once a disciplinary decision has been made the disciplinary action shifts to another arena. *See for example, Baton Rouge*, *supra*. Although Lawrence had an option to go forward and seek to have the 10-day suspension reduced or even reversed, this does not change the fact that it was a "final" and not an interim decision to discipline Lawrence for her actions on July 9 and 10.

The evidence shows that at various points during the close to one-hour conversation Lawrence discussed the July 14 letter of proposed suspension; the written reprimand issued by Porpotage on July 9; and an earlier, unrelated grievance which was filed in April 1996. Lawrence combined these three separate incidents in her recollection of the

---

5 It does not appear that an investigation was necessary because Respondent already had Porpotage's written account of the incident as well as the e-mail message which Lawrence disseminated to all 700 OJP employees. These documents formed the basis for the proposed disciplinary action.

meeting, and it is, apparent from her testimony that she clearly believed that the meeting was investigatory.

Lawrence stated that another reason for discussing the matter with Wilson, was because he said that he was going to examine and investigate the issues, and that he was an attorney, the active attorney that was handling the agency's case. It is difficult to believe that Wilson would make such a statement when he was clearly acting in his position as Deputy Administrator in issuing the proposed suspension, not as an investigator. Lawrence seemed to confuse this action with an earlier grievance that she filed which, Wilson had investigated. Indeed Lawrence appears to have wanted to make Wilson the investigator as she testified, "I thought he was going to investigate. . . ." Furthermore, Lawrence added, "I wanted him to know that the whole issue was contrived." The claim that Wilson was seeking "to obtain the facts" or "determine the cause" of the incidents appears groundless. Lawrence's testimony revealed how hopeful she was that Wilson would undertake an investigation of the incidents involving Porpotage. In Lawrence's view it seemed that there had been no investigation, and she was no doubt hoping that disclosing information to Wilson would influence him to investigate her allegations and, that she would therefore, be exonerated.

It is the view of the undersigned, that Wilson neither sought to solicit additional information and evidence to support Respondent's action nor did he seek to see if Lawrence would deny such allegations. As previously noted, this was a meeting to begin the disciplinary process and the approximately one hour conversation that occurred did not turn the meeting into an investigation. There is clearly no entitlement to union representation where a meeting is called solely to inform an employee of a disciplinary decision previously made and to determine whether the employee understood why discipline is being imposed. *Baton Rouge*.

In this matter, I find that Wilson did not exceed the above requirement. Accordingly, the second element of section 7114(a)(2)(B) has not been met.

Thus, based on the foregoing, it is found that the meeting of July 14 was not "in connection with an investigation."

c. Lawrence Could Not Have "Reasonably Believed" that Disciplinary Action Might Have Resulted

It is undisputed 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) *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). *See also American Federation of Government Employees, Local 2544 v. FLRA,* 779 F.2d 719 (D.C. Cir. 1985).

Setting aside the fact that the meeting of July 14 did not involve an examination and was not in connection with an investigation, under the circumstances presented, a reasonable person would not conclude that disciplinary action might have resulted from the meeting. That is, if an employee is informed that the purpose of a meeting is merely to perform the ministerial act of issuing a letter of proposed discipline, a reasonable person would not conclude that attendance at, and participation in, such a meeting might form the basis of disciplinary action. While the individual may have a subjective belief that attendance at such a meeting might result in further disciplinary action, the undersigned agrees with Respondent that such a belief is not objectively reasonable in the circumstances of this case. Lawrence testified that she thought Wilson was investigating the matter. An unsettled Lawrence mistakenly believed, in my view, that this was the time and place to begin her defense of this proposed suspension. That belief, however, was unfounded. Although the penalty may have been reduced at the next level, the fact that Respondent had already made a final decision that some discipline should be initiated in Lawrence's case is unchanged. Accordingly, it was established that the Respondent, based on facts and evidence that it had prior to the meeting, arrived at its ultimate decision to discipline Lawrence prior to the July 14 meeting.

Although Lawrence may have believed that her attendance at, and participation in the July 14 meeting might have resulted in disciplinary action, such a belief was not reasonable. Accordingly, the third element of section 7114(a)(2)(B) has not been met.

d. Lawrence Did Not Request Union Representation

The right to union representation under section 7114(a)(2)(B) will affix itself only if a valid request for such representation is made. This requirement has been upheld by

the Authority in numerous prior decisions. *See, Norfolk Naval Shipyard, Portsmouth, Virginia,* 35 FLRA 1069, 1073-74 (1990). It has also been held that the request must be sufficient to put the employer on notice of the employee's desire for representation. Id.

Wilson testified, that Lawrence did not, at any time during the meeting of July 14 request Union representation. To the contrary, the only time that the union was even mentioned during the conversation, according to Wilson, was when it was raised by him when he suggested that Lawrence might want to consider speaking with the Charging Party concerning the proposed suspension. When Wilson raised the subject of the Union, Lawrence, according to Wilson, expressed dissatisfaction with the service that the Union had provided her on previous occasions and told him that she would not be contacting the Union.

As with the other elements, Wilson's testimony on this point is credible. Wilson's testimony was consistent throughout the proceeding; his recollection was clear that no request was made and that it was he who broached the subject of union representation.[6]

Lawrence stated that she requested union representation at two distinct points during the meeting--the first was made after she briefly skimmed the letter of proposed discipline, and the second was made when Wilson suggested that she contact a counselor in the employee assistance program. Later on in her testimony, however, Lawrence testified that she asked for union representation when she found out that Wilson "was actually the attorney handling the agency's case." At still a later point, she again altered her account and testified that "she asked for union representation because [Wilson] was asking me all these questions and I was concerned." Finally, Lawrence made one last attempt to identify the point when she requested union representation: "I believe it was on the second page . . .

[6] Wilson was asked on cross-examination whether it was he or Lawrence who raised the issue of union representation. Although Wilson indicated that it was Lawrence who mentioned the issue, he explained that she raised it in the context of her expressing dissatisfaction with the Union. Wilson noted that he had suggested that Lawrence respond to the proposal if she did not believe it was fair; it was at that point that Lawrence "brought up" the union and expressed her dissatisfaction with the way she had been treated by the union in the past. This exchange does not contradict Wilson's testimony that there was never a request for representation made by Lawrence.

[w]hen he said that you have a right to review the material about the third paragraph." In the circumstances, although it is clear that Lawrence did mention union representation, Wilson's testimony that union representation was not requested is credited.

Even assuming that Lawrence is credited with regard to her request for a representative, based on the prior findings in this matter, she would still not be entitled to a representative since no section 7114(a)(2)(B) rights were triggered by this meeting. It is essential that all four elements are satisfied before a statutory right to union representation attaches. Consequently, the right does not affix itself if one or more elements are not shown. Since none of the elements of section 7114(a)(2)(B) are satisfied in the instant case, Lawrence, in the undersigned's view did not have a right to union representation. Accordingly, it is found that Respondent did not violate section 7116(a)(1) and (8) of the Statute by failing to comply with section 7114(a)(2)(B) of the Statute.

In summary, I find that none of the four elements of section 7114(a)(2)(B) is present in the instant case. Accordingly, Lawrence was not denied the right to have a union representative present when she met with Wilson on July 14. Therefore, it is recommended that the Authority adopt the following Order:

ORDER

The Complaint in Case No. WA-CA-70652, is hereby, dismissed.

Issued, Washington, DC, March 5, 1998.

_____

ELI NASH, JR.
Administrative Law Judge

Certificate of Service

I hereby certify that copies of the **DECISION** issued by ELI NASH, JR., Administrative Law Judge, in Case No. WA-CA-70652, were sent to the following parties:

CERTIFIED MAIL, RETURN RECEIPT	**CERTIFIED NOS:**
Christopher Feldenzer, Esquire Patricia Armstrong, Esquire Federal Labor Relations Authority 1255 22nd Street, NW, Suite 400 Washington, DC 20037	P600-695-825
Harry Jones, Esquire Eric Daniels, Esquire DOJ, Workforce Relations Group 1331 Pennsylvania Ave., NW, Suite 1150 Washington, DC 20530	P600-695-827
Stuart Smith, President AFSCME, Local 2830 Office of Justice Programs 810 7th Street, NW. Washington, DC 20531	P600-696-741

_____

Dated: March 5, 1998
Washington, DC