

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

DEPARTMENT OF DEFENSE DEFENSE CONTRACT MANAGEMENT AGENCY ORLANDO, FLORIDA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3953  Charging Party	Case No. AT-CA-00310

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

Any such exceptions must be filed on or before **MAY 21, 2001**, and addressed to:

Federal Labor Relations Authority  
Office of Case Control  
607 14th Street, NW, Suite 415  
Washington, DC 20424-0001

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WILLIAM B. DEVANEY  
Administrative Law Judge

Dated: April 17, 2001  
Washington, DC

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

MEMORANDUM

DATE: April 17, 2001

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY  
Administrative Law Judge

SUBJECT: DEPARTMENT OF DEFENSE  
DEFENSE CONTRACT MANAGEMENT AGENCY  
ORLANDO, FLORIDA

Respondent

and

Case No. AT-CA-00310

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3953

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

01-31

WASHINGTON, D.C.

DEPARTMENT OF DEFENSE DEFENSE CONTRACT MANAGEMENT AGENCY ORLANDO, FLORIDA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3953  Charging Party	Case No. AT-CA-00310

David Norris, Esquire  
Major Thomas J. Nied, U.S.A.F.  
For the Respondent

Mr. Michael Johnson  
For the Charging Party

Brent Hudspeth, Esquire  
For the General Counsel

Before: WILLIAM B. DEVANEY  
Administrative Law Judge

**DECISION**

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1 et seq., concerns whether Respondent questioned Chief Steward Michael Johnson as to why he questioned employee Tara Michelle Wagner about her possible transfer and/or Mr. Johnson's two day suspension, ". . . for contemptuous behavior and abusive or offensive language during . . ." his

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71", of the statutory reference, i.e., Section 7116(a)(2) will be referred to, simply, as, "\$ 16(a)(2)".

questioning by Respondent and/or whether Respondent made, ". . . several threatening and intimidating statements to Johnson regarding his role as a Chief Steward . . .", as alleged in Pars. 13b., 14, 15 and 16 of the Complaint, in violation of §§ 16(a)(1) and (2) of the Statute.

This case was initiated by a charge filed on February 4, 2000 (G.C. Exh. 1(a)) which alleged violations of §§ 16(a)(1), (2) and (5) of the Statute and by an Amended Charge, filed on July 14, 2000 (G.C. Exh. 1(c)) which alleged violations of §§ 16(a)(1) and (2) of the Statute. The Complaint and Notice of Hearing issued on July 31, 2000; alleged violations of §§ 16(a)(1) and (2) of the Statute; and set the hearing for October 27, 2000, pursuant to which a hearing was duly held on October 27, 2000, in Orlando, Florida, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which Respondent exercised. At the conclusion of the hearing, November 27, 2000, was fixed as the date for mailing post-hearing briefs and General Counsel and Respondent each timely mailed an excellent brief, received on, or before, December 5, 2000, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

### FINDINGS

1. The American Federation of Government Employees, Local 3953 (hereinafter, "Union") is the exclusive representative of employees of the Defense Contract Management Agency, Orlando, Florida (hereinafter, "Respondent").

2. Mr. William Aman, herein referred to by his nickname, "Rick" (Tr. 64), has been a Steward for four or five years (Tr. 64), was Vice President in Melbourne for two or three years and was President of the Union for the State of Florida for about six months (Tr. 65). Mr. Aman explained the organization of Respondent as follows:

Commander (Captain, U.S.N., Robert L. Williams)  
Deputy Commander (Joan White)

<u>TAG (Technical Assistance Group)</u>	<u>Operations</u>	
GS-14 (Terry Hodges)	GS-14 (Tom Straub)	
EDW (Tr. 80, 90)	<u>TEAM GOOA</u>	<u>TEAM GOOB</u>
<u>LEAD ADMINISTRATOR</u>	<u>SUPERVISOR</u>	<u>SUPERVISOR</u>

(Tr. 80)	BARBARA TURNER	(NOT NAMED)
	<u>ACOs</u> (Administra-	<u>ACOs</u>
	tive Contracting	
	Officers	TARA WAGNER
	JANICE STEPHENSON	(possibly one
	( <u>Two others</u> - not	other; not
named)		
	<u>named</u> (Tr. 87, 91)	(Tr. 87,
91)		
	<u>CONTRACT</u>	<u>CONTRACT</u>
	<u>ADMINISTRATORS</u>	<u>ADMINISTRATORS</u>
	William Aman	Bill Lucas (Tr.
	(others not named)	25) (others
not		
		named)
		(Tr. 65, 66, 70)

3. Mr. Aman said he was on the employee-implementation for EDW (he said he had forgotten what the letters were, ". . . a symbol for" (Tr. 80)) which is, "Electronic Data . . . Basically, it's for reviewing contracts online electronically." (Tr. 80) Mr. Aman said that initially EDW was set up with ". . . administrators [of whom he was one] in different parts of the organization" (Tr. 80); but that, ". . . it became pretty clear that we were going to need a focal point for the EDW . . . it became clear that we were going to have to have a lead administrator . . ." (Tr. 80). He said that they just were going to put Ms. Tara Wagner in the position (Tr. 80), but other employees, ". . . wanted a shot at the position" (Tr. 80) and Ms. Wagner told Mr. Aman ". . . she wasn't sure she wanted to go over there either." (Tr. 86) Accordingly, the position [EDW Lead Administrator in TAG] was posted on the internet, by Terry Hodges, to all employees in the building requesting volunteers and at least Ms. Velma Haywood and Ms. Wagner bid for the position. (Tr. 81, 87) Mr. Aman was evasive when asked about the posting. For example, when asked,

"Q . . . Are you familiar with the fact that Terry Hodges sent out an E-mail to the building including yourself, requesting volunteers . . ." (Tr. 79)

Mr. Aman responded,

"A Well, I think the first thing that happened -- see I was on the EDW -- employee-implementation team. It first really started while we were doing EDW. On that team and trying to implement it into the facility, it became

pretty clear that we were going to need a focal point for the EDW . . . ." (Tr. 80)

Then he was asked,

"Q . . . Are you aware . . . that this was a transfer that was requested of everybody in the building, and nobody responded except Velma and Tara Wagner? Velma Hayward and Tara Wagner. Is that true?

"A I don't know if Velma actually applied. I don't know who applied for the position. . . ." (Tr. 81)

But thereafter, Mr. Aman stated,

"A . . . Velma, I think, after she wasn't selected was not too happy." (Tr. 89)

Later, I asked,

"JUDGE DEVANEY: She [Wagner] wanted it and later she bid for the job?

"THE WITNESS: Right. . . ." (Tr. 91)

4. Sometime in November, 1999, [The parties stipulated that, if called, Ms. Stephenson would testify that the meeting in Ms. Turner's office was on November 30, 1999 (Jt. Exh. 1, p. 2)]. Ms. Barbara Turner, Mr. Aman's supervisor (Team Leader), called him to her office and Ms. Janice Stephenson, an Administrative Contracting Officer on his team, i.e. GOOA, was there (Tr. 65).<sup>2</sup> Mr. Aman stated,

"A She [Turner] said she wanted to basically get some advice as far as what she should probably be doing. You know, was she doing the proper thing? Kind of asking me what was supposed to take place because she was informing Janice Stephenson and they had already been talking about it.

. . .

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Later, Mr. Aman testified, ". . . I think it was maybe a week later" (Tr. 68) that he informed Mike Johnson. Mr. Johnson testified that Mr. Aman met with him, ". . . on the last day of November 1999, or on the morning of December 1<sup>st</sup>." (Tr. 21)

"A I told her [Turner] about the requirement for -- I think the requirement in the agreement is to notify the labor representative for the activity fifteen days in advance of any actual reorganization or transfers." (Tr. 65-66)

The parties stipulated, in pertinent part, as follows:

"The Parties stipulate that if called to testify, Janice Stephenson would testify that on November 30, 1999, she expressed her concerns over a potential reassignment to her supervisor, Barbara Turner. During this discussion, Turner summoned Union Steward, William (Rick) Aman, so that they could discuss Ms. Stephenson's rights in this regard." (Jt. Exh. 1, p. 2)

Mr. Aman stated that right after the meeting, he and Ms. Stephenson had a further discussion at Ms. Stephenson's cubicle at which time Ms. Stephenson told Mr. Aman that Ms. Turner had told her that because she was the junior Administrative Contracting Officer on the GOOA team she would have to go over to GOOB to assume Ms. Wagner's work. (Tr. 67, 91) Although Mr. Aman said that sending Ms. Stephenson because she was the junior ACO on her team, ". . . would be incorrect actually. That could be a negotiating position for the union, but that wouldn't be for management to say. I don't think that's in the agreement, but I think that's how the union usually does it." (Tr. 67), the record does not show whether this was, or was not, discussed with Ms. Turner. Indeed, Mr. Aman's testimony shows that he told Ms. Turner only that notice must be given to the Union fifteen days in advance of any actual reorganization or transfer (Tr. 66), the clear inference being that any "actual reorganization or transfers" (Tr. 66) were in the future.

5. Mr. Aman did speak to Mr. Johnson, either on November 30 or in the morning of December 1, 1999 (Tr. 21). Mr. Aman said,

"A . . . I talked to Mike about it. Since he hadn't told me about it, I kind of figured that they hadn't told him. That was not unusual because of several other things they had not told him before. So I was ready when I talked to him with several things he probably needed to do. I told him how I felt about the whole situation of me being informed because I serve at his bequest in our union. All my duties flow from his

authority and anything I do, he basically asks me to do.

"When management contacts or wants to -- the way we're set up is that he is the lone elected official for that Command and they are supposed to talk to him about anything to do with labor relations, not me. They are not supposed to come to me. So I told him about that. I told him some of the things he needed to do such as, he needed to go talk to individuals I knew that were effected (sic). He needed to talk to Janice Stephenson. He needed to go talk to Tara. He needed to go ask management why they hadn't informed him, and a couple other things. I don't recall all the things, but we talked for a while about it." (Tr. 69)

Mr. Johnson remembered the conversation as follows:

"A I'm not sure if Rick Aman came to me on the last day of November 1999, or on the morning of December 1<sup>st</sup>.

. . .

"A He came over to my cubicle and asked me to come over to see him, and he talked about his . . . meeting with Janice Stephenson and Barb Turner, where Barb Turner was telling Rick that, you know, she may be losing Janice Stephenson to another team to fill in behind Tara Wagner, because Tara Wagner supposedly was being transferred over to TAG, and he asked me if I knew anything about it and I said I didn't know anything about it. Then Rick said, 'The Union is supposed to be notified of transfers and reassignments and reorganization and ecetera, like that, and have they notified you, Mike? You're the Union person here. You're the Chief Union Steward here. You represent the bargaining units.' I said, 'Rick, I didn't know what was going on, but I'll check into it for you.'" (Tr. 21).

6. While on her lunch break on December 1, 1999, Ms. Tara Wagner was soliciting donations for money to get gifts for "Foster Angels" (Tr. 136) ("Toys For Tots" in Mr. Johnson's recollection (Tr. 22)), and when she reached Mr. Johnson's cubicle he asked to speak to her. Ms. Wagner testified,



"A He said that he was requested on Joan White's behalf as the union head honcho to find out my real reasons for moving and wanting to go to the Technical Assessment Group." (Tr. 136)

On cross-examination, Ms. Wagner said,

"A I told her [Ms. White] exactly what he [Johnson] said. That Mike [Johnson] had stopped me and said, 'Joan White asked me as union head honcho, for your real reasons to move to TAG and to give her a recommendation back.'" (Tr. 151)

Mr. Johnson testified that he said he,

"A . . . was Union honcho . . . 'I'm here to find out the facts because I am the Union representative. I've been asked to check into a rumor that you were being given favoritism and that the Union wasn't notified of the transfers of personnel around here. In order for be to understand what's going on because I didn't know, you know, what the full circumstances were, that you explain what's going on here about what I've heard today from someone else across the hall.'" (Tr. 23)

. . .

"A . . . I told her that I would go to Joan White and ask her first of all, why isn't the Command here notifying the Union of transfers of people? You know, why are we being kept in the dark? If I feel that there's no favoritism here when we discuss impact and implementation, then I would recommend to her what the Union thinks about, you know, the situation, but I needed to find out the full facts on the issues." (Tr. 24)

Mr. Johnson said that Ms. Wagner told him that he, Johnson, had been at the team meeting, ". . . where the team was attacking me [Wagner] and we didn't get along" (Tr. 24) and she had gone to Major Stewart, her then supervisor, and asked to be transferred to an open job in EDW; but, thereafter, things settled down and she decided she did not want to leave GOOB, so Mr. Hodges [TAG-EDW] had asked for volunteers for the EDW job; that Ms. Wagner had not volunteered and she was asked why not, to which she had responded that she wasn't sure she wanted to work there but had suggested that she would be willing to work at EDW part

time and still do her regular ACO work at GOOB. (Tr. 24-26) Mr. Johnson said he, ". . . didn't feel like there was any favoritism and I figured well, it's not really an important issue right now. I would take care of it later because I had left and gone out to the company that afternoon to do my job." (Tr. 26)

Mr. Johnson said that when he got back at the end of the day [December 1] there was a message to see Ms. White; that he had gone to her office but she had left for the day. The next day, December 2, he said he had a prearranged meeting with another company and was out of the office most of the morning. (Tr. 27) When he returned, he learned Ms. White had set up a meeting for 1:00 p.m. and he went to her office for the meeting. (Tr. 27)

7. Ms. Wagner said that immediately after talking to Mr. Johnson she had gone upstairs for lunch and that she, ". . . happened to relay the conversation . . . it probably wasn't a matter of even five minutes from our conclusion of the conversation [with Mr. Johnson] to my being up in the break room, that I related the conversation to some people that were up in the break room. . . . One of those individuals said, 'Well, wouldn't that be kind of strange that Joan White would go to Mike Johnson to ask you?'" (Tr. 138-139)

Accordingly, after lunch, Ms. Wagner went to Ms. White and asked Ms. White directly if she had asked Mr. Johnson to question her, Wagner, on her (White's) behalf. Ms. Wagner stated that Ms. White, ". . . said, no she did not ask Mike, and at that point she asked if I had a problem with calling Mike Johnson into the room and discussing the matter." (Tr. 139-140) Ms. Wagner told Ms. White she had no problem calling Mr. Johnson in, ". . . however, Mike was not available at that time and we concluded the conversation until the next day. [December 2]". (Res. Exh. 1) Ms. Wagner said she had told Ms. White that Mr. Johnson had said, "Joan White asked me as union head honcho, for your real reasons to move to TAG and to give her a recommendation back." (Tr. 151; Res. Exh. 1) Ms. White fully corroborated Ms. Wagner's statements to her on December 1, 1999. (Tr. 124-126; Res. Exh. 2, p. 1)

8. On December 2, 1999, Mr. Aman, at lunchtime, went to the food court and Ms. Wagner was eating and he picked up his food and went over to her table and had lunch. Mr. Aman said that she told him she had set up a meeting and was getting ready to go to a meeting with Joan White, ". . . that afternoon after lunch to discuss -- I guess to verify -- something she thought that Mike had said . . . and also

to ask whether Joan had asked Mike to go ask her questions. . . ." (Tr. 70-71) (Emphasis supplied). Mr. Aman said, ". . . Tara was a little agitated and I guess, upset about it or otherwise she wouldn't be talking to Joan." (Tr. 71)

Mr. Aman told Ms. Wagner that he had talked to Barbara [Turner] and, ". . . that I had gotten (sic) involved and that I had asked Mike to go talk to several employees . . . I explained to her that he [Johnson] has a responsibility to do this and I didn't know anything about what Joan and Mike had discussed . . . It was his job as the labor representative to go talk to the employees about this. Whether or not Joan had asked me (sic) to do anything, really didn't matter because his authority didn't flow from Joan. It flows from the statute -- from being a labor representative. . . ." (Tr. 71)

Later, Mr. Aman sought to move the date of his luncheon meeting with Ms. Wagner from December 2 to December 1, ". . . It was the day before I was called into Joan's office. I do know that. . . ." (Tr. 72) All other testimony and evidence is to the contrary. Mr. Johnson placed his discussion with Mr. Aman, at which Mr. Aman told him about the transfer of Ms. Wagner, on the morning of December 1. (Tr. 22, 26) Mr. Johnson said, ". . . After I talked to Rick Aman, then I went back to my cubicle because I had a lot of work to do . . . Tara Wagner came by . . . I said, 'By the way Tara, can I talk to you about something? . . .'" (Tr. 22) Although Mr. Johnson did not put a time on his conversation with Ms. Wagner, he said that upon concluding their conversation, ". . . I figured well, it's not really an important issue right now. I would take care of it later because I had left and gone out to the company that afternoon to do my job." (Tr. 26), which directly implies that his conversation with Ms. Wagner ended at about noon because he had left and gone out that afternoon. Ms. Wagner testified credibly and without contradiction that it was at lunch with fellow employees on December 1, 1999, that she related Mr. Johnson's statement and one of them had raised the question that it seemed strange that Deputy Director White would have asked Mr. Johnson to question her, Wagner, on Ms. White's behalf. Ms. Wagner did not go to Ms. White until after lunch on December 1, 1999; and Ms. Wagner's statement shows that, ". . . Mike was not available at that time [December 1] and we concluded the conversation until the next day." (Res. Exh. 1) Further, Mr. Aman's testimony that Ms. Wagner, ". . . was getting ready to go to a meeting with Joan White that afternoon after lunch . . ." (Tr. 70) is consistent with the fact that the meeting was set for 1:00 p.m.,

December 2. Accordingly, Mr. Aman could not have had the luncheon discussion with Ms. Wagner until December 2. Mr. Aman had it right the first time - the meeting with Ms. Wagner was on December 2, 1999 - and I do not credit his testimony that it was on December 1, 1999.

9. Mr. Johnson was the first to arrive for the 1:00 p.m. meeting on December 2, 1999, and sat in the outer office. A couple of minutes later, Ms. Wagner arrived and sat down next to him and they chatted. (Tr. 29, 141) Ms. White came in from the outside. At about the time she said, "Come on in" to the small conference room, Mr. Johnson asked Ms. Wagner if she knew what the meeting was about and Ms. Wagner had said, yes, it was about his, Johnson's, misrepresenting himself to her, Wagner, the day before. (Tr. 29, 141) As Mr. Johnson and Ms. Wagner entered the conference room, Mr. Johnson was vociferously denying that he had said he was representing Joan White. He insisted, ". . . I was representing the Union." (Tr. 29) After they entered, Ms. White shut the door (Tr. 30) and Ms. White said that she spoke first and, ". . . I started out just like that, 'The purpose of this meeting is to,' and before I could finish that statement he turned away from me. He was facing me and she was facing me. He turned to Tara and very angrily shouted to her, 'You are lying! You are a liar! I did not say that.' Very angrily he attacked her immediately. He went on for more than a minute he was just saying to her, 'You're lying! I didn't say that. I did not tell you that. I didn't say that.' ". . . His voice was escalating and I was trying to calm him down." (Tr. 106) Ms. White said, "At this time he was sitting, but he eventually stood up and he was going over and over. He . . . said, 'I hate. I hate it here. I hate this Agency, and I hate DCM, and I hate management, and I'm going to get you . . . I'm going to get you. You're lying. You're just lying.' . . . I said, 'Mike, clam down, Mike. Control yourself. I just need to get to the bottom of this. Just calm down.' He was escalating and he did that for a while." (Tr. 106-107) When asked if Mr. Johnson responded to her requests that he quiet down, Ms. White answered, ". . . Not immediately. Eventually, after a few minutes Tara responded to him and she said, 'No, I'm not lying. You're lying. You did say that. You said that Joan asked you to ask me those questions and that's why I answered you.' . . . At one time Tara escalated her voice too and she said, 'No, no, no, Mike. You're lying!' I motioned to her and said, 'Tara,' and she calmed right down." (Tr. 107) When asked if Ms. Wagner got excited after that, Ms. White said, ". . . No, never again. She sat back and Mike, you know, continued to direct his anger at her." (Tr. 107) Ms. White said Mr. Johnson turned his wrath on her, ". . .

He turned back to me and said that he really hated this Agency and he hated management, and that he was going to get us. He was going to see to it that he got us. He said it cost him about \$3,000 a case, and he was going to get us, and he was going to sue me, and he was going to sue management. He named several other people that he was going to sue." (Tr. 108) Mr. Johnson did, in fact, sue Ms. White. (Tr. 108) Mr. Johnson sued Ms. White in the Florida State Court in Orange County for intentional infliction of emotional distress; and the suit was removed to the United States District Court where it was dismissed. (Tr. 120-121)

Ms. White said, ". . . It was probably fifteen minutes or so, and he was still -- we had not talked through the first issue of what he said to Tara, and what actually transpired. Then he said, 'Rick Aman asked me to question Tara.' I said, 'Okay, then I'll get Rick.'" (Tr. 113). Although Ms. White first said that the only question she asked Mr. Johnson was whether he had misrepresented himself (Tr. 119, 122), she later admitted that she once asked him who complained to him that initiated his investigation (Tr. 122). Ms. Wagner confirmed that Ms. White had asked Mr. Johnson who had complained and Mr. Johnson had said ". . . Rick Aman." (Tr. 153)

10. Ms. Wagner confirmed Ms. White's testimony concerning Mr. Johnson's two seven minute outbursts. (Tr. 142, 144, 148, 149, 153) She said Mr. Johnson was, "A Rambling. He brought everything else into context that had nothing to do with it. He was talking about the different schools that he had gone to, and he was talking about how the Agency isn't any good, and management isn't any good, and he was going to sue this person, and sue that person. He just completely -- so you just sit there and you just let him go because there was not (sic) stopping him." (Tr. 148-149) Ms. Wagner, as had Ms. White, said Mr. Johnson said, ". . . it only costs \$3,000 to file a suit and that he was going to file a suit against Joan, and he was going to file it against Barb Turner and Peggy Gilmour and all this kind of stuff. That he was going to file a suit against me, that's when I then raised my voice and said, 'Go ahead and do it. You're going to do what you want to do.' . . . That was the only time that I raised my -- even at that point, Joan White calmed me back down and then I never raised my voice again." (Tr. 142-143) Mr. Johnson did, in fact sue Ms. Wagner for, "Defamation of character"; alleging she had "published" her comments by writing a memorandum for record (Tr. 143. 144; Res. Exh. 1); and that the suit was dismissed. (Tr. 155)

Ms. Wagner, like Ms. White (Tr. 117), said that Mr. Johnson said, ". . . I know the person who didn't want me in your meeting"; that she, Wagner, had said, "Mike, it wasn't one person. It was the consensus of the group that your presence was not warranted." (Tr. 145) because of his misrepresentation of what happened in those meetings. (Tr. 117, 146)

11. As noted above, when Mr. Johnson said Mr. Aman told him to question Ms. Wagner, Ms. White sent for Mr. Aman who came to the meeting a few minutes later. Mr. Aman said, ". . . As far as what the meeting was about, I don't know that I was given any clear indication. I had to suppose everything. I mean, I had to ask that myself. I don't know what that meeting was about to tell you the truth. . . ." (Tr. 96) I do not credit this testimony for the reason that he conceded that Ms. Wagner had told him at lunch that day, December 2, that she was getting ready to go to a meeting, ". . . that afternoon after lunch to discuss -- I guess to verify -- something she thought that Mike had said . . . and also to ask whether Joan had asked Mike to go ask her questions . . . ." (Tr. 70-71) Moreover, Mr. Aman stated that, ". . . Tara had informed me prior to . . . about Mike. You know, about the whole situation. . . ." (Tr. 93) Accordingly, I find that Mr. Aman knew full well what the meeting was about when he entered.

Mr. Aman said that when he entered, Ms. White ". . . asked me to go over my involvement in the reorganization -- transfer, I guess, that was taking place." (Tr. 75) (See also, Tr. 94-95.) Ms. White said,

"Rick walked in and he and Mike -- I started to tell him -- to relay the story that Tara had come to me and asked me questions, and said that Mike was representing me and he wanted to question why she was being transferred to TAG.

"Rick turned to Tara and said, 'Well maybe Tara, maybe you misunderstood Mike's questioning. Maybe that's what happened.' By this time, Rick had walked into the room and he was standing in the back and Mike was standing. He was still standing at this time. He had gotten (sic) up one time during his anger. He stood up in the room -- backed up and stood up. So he was back with Rick in the back and they were talking about several things, and they were relaying the conversation that they had previously had with each other. So Rick again said to Tara, 'Well Tara, you may have

misunderstood what Mike was saying.' Of course she said, 'No I did not misunderstand. He said that.' Then they continued to talk and Tara looked and said, 'That has nothing to do with me and I'm going to excuse myself.'

. . . ." (Tr. 113-114)

When asked about the discussion about Mr. Johnson's alleged misrepresentation that he was acting on the Deputy Commander's behalf, Mr. Aman replied,

"A There was some discussion along that line between Tara and Mike and voices did get raised at that point.

"Q Did anybody ask you anything directly about that?

"A Not directly, but I jumped in a couple times. I do know that.

"Q Did you have any direct knowledge about that issue?

"A About -- as to whether --

"Q As to whether Mr. Johnson actually misrepresented himself or not?

"A No. I don't know anything about that. To me, and while we were talking, it became obvious, I mean, within a minute or two that there were -- barring what my discussions with Joan and what I did, but when Tara and Mike started talking and discussing things, it was very obvious that there was some kind of mis-communication, or something was going on that they were not in agreement on. It was a 'he said', 'she said' type thing." (Tr. 76-77)

Mr. Aman steadfastly refused to consider whether Mr. Johnson had, as Ms. Wagner asserted, misrepresented himself to her as Ms. White's representative. Thus, he told Ms. Wagner that it didn't matter whether Ms. White had asked him to act for her, ". . . because his [Johnson's] authority didn't flow from Joan. It flows from the statute -- from being a labor representative. . . ." (Tr. 71); and he said that at the meeting that, ". . . I tried to make it very clear in trying to calm things down -- I had already talked to Tara about it and I hadn't talked to Joan about it, but I made

myself very clear that I felt that Mike was performing a duty and a responsibility that he needed to do. I didn't really understand what this was all about. Why were we even in the room? . . ." (Tr. 77-78) Later, he said, ". . . As far as I was concerned, the meeting was about Mike performing his duties as a representative. . . ." (Tr. 95)

I have no doubt that Mr. Aman talked about his meeting with Ms. Turner and Ms. Stephenson, i.e., about the intended transfer, etc.; but I do not credit his testimony that this discussion came about as the result of Ms. White's questioning. Rather, I credit Ms. White's testimony, which I found wholly credible. Thus, as she credibly testified, Mr. Aman, being well aware of what the meeting was about, began by saying, "Well maybe Tara, maybe you misunderstood Mike's questioning. Maybe that's what happened." (Tr. 113) and Mr. Aman's statements poured forth as Mr. Johnson and he relayed the conversation they previously had had. (Tr. 114) Indeed, he concluded his testimony stating, ". . . That's all we did talk about was the transfer and some of the things that Mike did as a representative. There were no personal -- no work-related issues discussed." (Tr. 96) The record suggests that Mr. Aman was not forthcoming either with Ms. Turner or with Mr. Johnson and he appears to have manipulated each. For example, he did not indicate that he told Ms. Turner that she should notify Mr. Johnson rather than himself, as steward, i.e., he said he told her about, ". . . the requirement in the agreement is to notify the labor representative for the activity fifteen days in advance of any actual reorganization or transfers." (Tr. 66); he did not indicate that he told Ms. Turner that selection of an ACO on the basis of seniority was improper; but immediately after leaving Ms. Turner, he told Ms. Stephenson that selection of the, ". . . lowest senior person . . . would be incorrect . . ." (Tr. 67); he did not raise any question with Ms. Turner, or with Ms. Stephenson, about Ms. Wagner's selection; in his discussion with Mr. Johnson, he did not tell Mr. Johnson that the TAG position had been "posted" on the internet and volunteers had been solicited; he told Mr. Johnson that management was supposed to notify him, ". . . They are not supposed to come to me. . . ." (Tr. 69) but he had not indicated he had told Ms. Turner that she should not have contacted him; he implied to Mr. Johnson, if he did not tell him, as Mr. Johnson said he did (Tr. 21), that Ms. Stephenson was going to be transferred to assume Ms. Wagner's work, whereas he said Ms. Turner, ". . . wanted to basically get some advice as far as what she should probably be doing. . . ." (Tr. 65-66), which would indicate that, in accordance with his advice, nothing had been done and that notice would be given to the Union. As noted,



Mr. Aman's attempt to change the date of his luncheon meeting with Ms. Wagner was contrary to all other evidence and testimony and was not credited. Accordingly for all the reasons set forth above, I did not find Mr. Aman's testimony convincing or credible concerning Ms. White's questioning of him and, as previously stated, I credit the testimony of Ms. White.

12. When Ms. Wagner told Mr. Johnson, as they were preparing to enter the meeting room, in response to his inquiry, that the meeting was about his, Johnson's, misrepresentation that he was acting on behalf of the Deputy Commander, Ms. White, in questioning her, Wagner, Mr. Johnson, figuratively, "went ballistic". After Ms. White closed the door and began to state the purpose of the meeting, Mr. Johnson interrupted, calling Ms. Wagner a liar and began a long, rambling tirade. As General Counsel states, ". . . Johnson openly admitted that during the December 2, 1999 meeting that he lost his temper; that he refused to calm down when White told him to do so; that he interrupted White; that he called Wagner a liar . . ." (General Counsel's Brief, n.3, p. 2); but I do not agree that Mr. Johnson clearly and forthrightly related the events or that Mr. Johnson was a credible witness. Mr. Johnson threatened to sue Ms. White, Ms. Wagner, Ms. Gilmour and Ms. Turner and, while the record does not show that he sued either Ms. Gilmour or Ms. Turner, the record shows that he did, in fact, sue Ms. White and Ms. Wagner.

I did not find Mr. Johnson a credible witness. Initially, he talked about a team meeting [i.e., team GOOB] (Tr. 24), later he asserted, "Joan White also started to accuse me of other people in the building not wanting me to represent them. . . ." (Tr. 32) I do not find his testimony in this regard either convincing or credible. Rather, as Ms. Wagner credibly testified, Mr. Johnson said he knew the person who did not want him in GOOB meetings and that she, Wagner, had responded, "Mike, it wasn't one person. It was the consensus of the group that your presence was not warranted." (Tr. 145) because, ". . . they just didn't want him there because of the way things have a tendency not to come out (sic) they were said." (Tr. 146) I conclude that it was Ms. Wagner, not Ms. White, who said the GOOB team did not want Mr. Johnson at their meetings and that the reference to "representation" were solely in regard to his presence at team meetings. Mr. Johnson said, "There were other people who had filed lawsuits against her in the building. . . ." (Tr. 34); but Ms. White said, ". . . Not that I'm aware of. No. I've not been made aware of any other lawsuits." (Tr. 120) Ms. White said that in routine

meetings with different parties present, Mr. Johnson's recollection of events differed from everyone else (Tr. 111); that Mr. Johnson would, ". . . say that we agreed on things that we did not agree on. He's said things that were not true repeatedly. He's said them with me singularly, and also with other members. Other people such as Jannice (sic) [Szelak], who is the Union President in several meetings has said, 'Mike, that's not true. That didn't happen. . . .' (Tr. 118) Although Mr. Johnson denied that he told Mr. Charles T. Straub, Manager, Operations Group, on September 10, 1999, that when he goes into these rages he cannot later recall what he said and did in those rages (Tr. 63) Mr. Straub testified that Mr. Johnson, in September, 1999, ". . . indicated to me that during his episodes when he becomes very angry at work, he didn't always recall the things that he actually said. . . . The fairest assessment would be, I believe, that it was a general statement . . ., 'When I go into my outbursts or rages, I don't always recall what I have said.'" (Tr. 164) I conclude, therefore, that, as Ms. White and Ms. Wagner credibly testified, Mr. Johnson engaged in two loud, angry, rambling monologues each about seven minutes in length and interrupted only by Ms. Wagner's denials of Mr. Johnson's assertion that she had lied, or that GOOB team members wanted her to leave, and Ms. White's requests that he calm down; however, toward the end of his second monologue, Ms. White did ask him who told him to question Ms. Wagner and Mr. Johnson responded, "Mr. Aman". I credit the testimony of Ms. White and Ms. Wagner concerning what transpired at the December 2, 1999, meeting.

13. Mr. Johnson said that Ms. White asked, "Mike, are you trying to solicit work here, Union business, by going to Tara Wagner?" (Tr. 30) Ms. Wagner testified that she did not remember Ms. White asking Mr. Johnson why he had approached Ms. Wagner (Tr. 146-147) and Ms. White emphatically denied having made any such statement, saying, ". . . Oh, no. Not at all. No. I never said that. Again, Tara came to me. I never said that, no." (Tr. 119) I specifically do not credit Mr. Johnson and I credit Ms. White's denial and conclude that no such statement was made.

Mr. Johnson said, ". . . She [White] mentioned about the issues of bogus -- 'We had no issues in this building until you became the Union Steward. You're bringing all these issues to us now.' . . . Bogus issues. That's what her words were." (Tr. 32-33) Ms. Wagner testified that she recalled no such statement being made by Ms. White (Tr. 145) and Ms. White strongly denied any such statement, saying, in part, ". . . No. I did not say that, and I would never say

that, never. I would never say that in a meeting, or with employees, or anything of that nature. Not ever, no. I did not say that to him." (Tr. 116) I did not find Mr. Johnson's testimony credible and I do not credit his testimony but I credit Ms. White's denial and conclude that no such statement was made.

Mr. Johnson said, ". . . Then Joan White also started to accuse me of other people in the building not wanting me to represent them. . . ." (Tr. 32) This has been addressed previously and I did not find Mr. Johnson's testimony convincing or credible. Thus, it appeared from his earlier testimony that it was a team meeting [GOOB] about which Ms. Wagner had spoken; that, as Ms. Wagner credibly testified, the members of the team did not want Ms. Wagner present at their team meetings; and that it had been Ms. Wagner who said, ". . . It was the consensus of the group that your presence was not warranted." (Tr. 145) Ms. White denied that she made any such statement and testified, ". . . No. I did not say that. In fact during the exchange, one of the things that Mike had said to Tara was that he was glad that she was going to TAG. He was happy. In fact, the team was very happy that she was being transferred because nobody wanted her on the team and they were happy that she was being transferred. One of the things she said to him is, 'No. That's not true. That's not true at all. In fact, I just got a call from several of the teammates who have asked me to stay on the team. . . . It's you Mike. It's you that the team doesn't want. They don't want you to represent them. They don't want you to attend the meetings.' Mike said, 'Well, who is it? I know one person who doesn't want me to attend the meetings.' . . . Tara said, . . . 'it's all of the team. No one wants you because you always misrepresent what happens in these meetings, and none of the team wants you in the meeting. During that time they had said that they don't want you to represent them.' Tara in an exchange with Mike said that. I never said that." (Tr. 117) Accordingly, I do not credit Mr. Johnson's testimony and I do credit Ms. White's denial.

14. Ms. White stated that union business was not discussed in the December 2 meeting (Tr. 108) and that she did not ever raise union business (id.). Ms. White further said that during the meeting she did not attack or provoke Mr. Johnson (Tr. 116); nor had Ms. Wagner (id.). Ms. Wagner, when asked if she said anything to provoke Mr. Johnson into his outrage, replied, "A He began the outrage before I ever had anything to say." (Tr. 144); and when asked if Ms. White had provoked Mr. Johnson, she replied, "A No. In actual fact, I was very impressed with

the way Joan remained and kept calm in the situation." (id.). Ms. Wagner also said she did not recall any union issue. (Tr. 144-145)

Indeed, Mr. Johnson, reminiscent of the old chestnut, "The Devil made me do it", blamed his conduct on Union steward training, stating,

". . . I did go on to say that I had gone to Union Steward training -- by a big mistake -- and they said you could bang on the table, cuss, everything else. Don't throw chairs and don't threaten people and I wish I would have never heard that, because I wouldn't have acted the way I did. I would have kept my composure . . . ." (Tr. 39-40)

15. Mr. Johnson was suspended for two days, April 26 and 27, 2000. (Tr. 40-41; Joint Exh. 3)

### CONCLUSIONS

The parties have stipulated, in part, as follows:

#### "ISSUES

"I. Did the Respondent violate Section 7116(a)(1) and/or (2) by suspending Michael Johnson due to protected activity he was engaged in on December 2, 1999?

"A. Were the actions that were the basis of Johnson's suspension activity protected by the Statute?

"B. If the activity described in A, was protected activity, did Johnson's conduct constitute flagrant misconduct so as to remove it from the protection of the Statute?

"II. Did the Respondent violate Section 7116(a)(1), through Joan White's statements during the December 2, 1999 meeting?

. . . ." (Joint Exh. 1)

#### 1. Investigation of alleged misrepresentation of authority.

As noted, the meeting of December 2, 1999, was called to determine whether Mr. Johnson had misrepresented his authority by telling Ms. Wagner he was questioning her on behalf of the Deputy Commander, Ms. White, and he would make

a recommendation to Ms. White. As Ms. White very credibly testified, when asked what she would have done if Mr. Johnson had just said, "No, I didn't say that",

"A I think I would have asked him to just explain it. Let's clear it up because that's what -- and repeat what she thought she heard and just try to get to the bottom of it.

"Again, this is something that is very common. It's something that I do when employees come with questions, or issues, or disagreements. We bring them in and try to resolve it." (Tr. 119)

But before Ms. White completed her statement as to the purpose of the meeting, Mr. Johnson interrupted and "exploded" on two long, rambling, angry monologues. As I have found, Ms. White did not question Mr. Johnson, indeed because of his tirades she had no opportunity to ask him anything until near the end of his second outburst when she did ask him who told him to question Ms. Wagner.

Misrepresentation of authority which occurs in the performance of protected activity is not, itself, protected activity. Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah, 25 FLRA 342, 352 (1997); nor is investigation of a misrepresentation of authority a violation of § 16(a)(1) of the Statute. Federal Bureau of Prisons, Office of Internal Affairs, Washington, D.C. and Federal Bureau of Prisons, Federal Correctional Institution Englewood, Littleton, Colorado (hereinafter "FBOP"), 53 FLRA 1500, 1509-1510 (1998)<sup>3</sup> As I have found, the conduct of the investigation did not violate the Statute, id., at 1501-1513.

## 2. The disciplining of Mr. Johnson.

Mr. Johnson was not disciplined for his conduct in questioning Ms. Wagner on December 1, 1999. To the contrary, he was disciplined for: 1. "Contemptuous Behavior

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This case involved two very distinct incidents, and charges, each of which involved the union president. One resulted from the investigation of an alleged assault by the union president after adjournment of a union meeting. The other concerned a dispute between the union president and an associate warden over the assignment of overtime, a counseling meeting of the union president over her use of profane and disrespectful language during the overtime incident, and the union president's walking out of the counseling meeting for which she was suspended for one day.

Towards Constituted Authority" during the meeting on December 2, 1999; and 2. "Abusive or Offensive Language" during the December 2, 1999, meeting (Joint Exhs. 2, 3)

Mr. Johnson's conduct on December 2, 1999, occurred in a meeting called to investigate his alleged misrepresentation of authority. As noted above, while misrepresentation of authority is not a protected activity, it occurred in the course of his performance of protected activity; he was called to the meeting on December 2, 1999, to investigate his alleged misrepresentation of authority; but he was the Chief Steward and his conduct at the meeting on December 2, 1999, occurred as Chief Steward and, as the Authority has held, when a union official attends such a meeting as a union official, his actions during that meeting are protected unless they constitute flagrant misconduct (id., at 1518).

3. Mr. Johnson's conduct on December 2, 1999, constituted flagrant misconduct.

As noted, Mr. Johnson interrupted Ms. White, embarked on two long, loud, rambling, angry monologues, called Ms. Wagner a liar repeatedly, "bad-mouthed" Ms. White, the agency, threatened to "get" Ms. White, threatened to sue Ms. White, Ms. Wagner, Ms. Turner and Ms. Gilmour, refused to heed Ms. White's repeated requests that he calm down, and used profanity<sup>4</sup>, although the profanity used was mild indeed. Mr. Johnson's tirades lasted about fifteen minutes and was heard by employees working outside the conference room. The National Labor Relations Board had held that the threat to sue for libel, ". . . is of a harassing nature. . . ." Clyde Taylor Company, 127 NLRB 103, 108 (1960) even though filing an action in Court is not, id., at 109; Consumer Product Safety Commission, 4 FLRA 803, 842-845 (1980). I am not aware of any Authority case that has involved the threat of a suit by a Union official for libel but there are other threats by labor organizations which the Authority has found to interfere with employees' protected rights. See, for example, National Army and Air Technicians Association, Local 371, 7 FLRA 154, 161 (1981) (Spencer [Business Representative] made it impossible for employee to refrain from joining the union "freely and without fear of penalty or reprisal."); Overseas Education Association, 15 FLRA 488, 490 (1984) (Published remarks, ". . .

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Ms. White did not repeat what Mr. Johnson said, only that ". . . At one point, he used profanity. . . ." (Tr. 115). Mr. Johnson said he used the work, "s \_ \_ \_"; ". . . I got up and said, 'I'm tired of this s \_ \_ \_.'" That's the curse word I said. . . ." (Tr. 33)

constitute implied threats which tend to have a coercive and restraining effect"). Mr. Johnson's outburst was impulsive, it occurred in Ms. White's office which she was using as a conference room, but it was not provoked by Respondent unless raising the allegation that Mr. Johnson had misrepresented his authority can be considered "provocation", which I do not. Mr. Johnson "exploded", usurped the meeting and embarked on two long, angry, loud, rambling monologues. Collectively, his actions constituted flagrant misconduct. Department of Defense, Defense Mapping Agency Aerospace Center, St. Louis, Missouri, 17 FLRA 71 (1985).

Because Mr. Johnson's tirades on December 2, 1999, including his threats, constituted flagrant misconduct his actions were not protected and Respondent did not violate §§ 16(a)(1) or (2) of the Statute by its Notice to Suspend, dated March 2, 2000, or by its Notice of Decision to Suspend, dated April 25, 2000, Mr. Johnson.

Further, having found that Ms. White did not make any threatening or intimidating statement to Mr. Johnson regarding his role as Chief Steward this allegation of the Complaint is dismissed.

Having found that Respondent did not violate the Statute, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. AT-CA-00310 be, and the same is hereby, dismissed.

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WILLIAM B. DEVANEY  
Administrative Law Judge

Dated: April 17, 2001  
Washington, DC



**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION** issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-00310, were sent to the following parties:

—

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Brent Hudspeth, Esquire  
Federal Labor Relations Authority  
285 Peachtree Center Avenue, NE  
Suite 701, Marquis Two Tower  
Atlanta, GA 30303-1270

P 855 724 100

Mr. David Norris, Esquire  
Major Thomas J. Nied  
U.S. Air Force  
3555 Maguire Boulevard  
Orlando, FL 32803

P 855 724 101

Mr. Michael Johnson  
6910 Tallowtree Road  
Sanford, FL 32771

P 855 724 102

Dated: April 17, 2001  
Washington, DC