UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: June 29, 1999

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF AGRICULTURE,
FOOD SAFETY AND INSPECTION
SERVICE, WASHINGTON, D.C.

Respondent

and Case No. WA-CA-80531

NATIONAL JOINT COUNCIL OF FOOD
INSPECTION LOCALS, AMERICAN
FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO

Charging Party

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

U.S. DEPARTMENT OF AGRICULTURE, FOOD SAFETY AND INSPECTION SERVICE, WASHINGTON, D.C. Respondent	
and NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Charging Party	Case No. WA-CA-80531

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 **AUGUST 2, 1999**, and addressed to:

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

SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

Dated: June 29, 1999
Washington, DC

OALJ 99-32

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF AGRICULTURE, FOOD SAFETY AND INSPECTION SERVICE, WASHINGTON, D.C. Respondent	
and NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Charging Party	Case No. WA-CA-80531

William Dailey, Esq.
For the Respondent

Sherrod G. Patterson, Esq.
For the General Counsel, FLRA

Mary Lynn Walker
For the Charging Party

Before: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

DECISION

Statement of the Case

This proceeding arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§7101-7135 (Statute), and the Revised Rules and Regulations of the Federal Labor Relations Authority (FLRA or the Authority) 5 C.F.R. §2423.1 *et seq.*

This proceeding was initiated by a charge filed, and amended, against U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, D.C. (FSIS or

Respondent), by National Joint Council of Food Inspection Locals, American Federation of Government Employees (AFL-CIO) (Union or Joint Council). The Regional Director of the Atlanta Region of the FLRA, on behalf of the General Counsel (GC) of the FLRA, issued a Complaint and Notice of Hearing in this case. The Complaint alleges that FSIS violated section 7116(a)(1) and (2) of the Statute by suspending the Union's Southern Council Vice President Charles Stanley Painter for five days because Painter had engaged in protected activity. FSIS filed an Answer denying the substantive allegations of the Complaint.

A hearing was held in Huntsville, Alabama, at which time all parties were afforded a full opportunity to be repre-sented, to be heard, to examine and cross-examine witnesses, and to introduce evidence. FSIS and GC of the FLRA filed timely post-hearing briefs, which have been fully considered.

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

Findings of Fact

A. Background

U.S. Department of Agriculture is an agency and FSIS is one of its component activities. The Joint Council is the exclusive collective bargaining representative for an appropriate unit of FSIS employees. FSIS and the Joint Council are parties to a collective bargaining agreement covering the employees in this unit.

The Southern Council, National Joint Council of Food Inspection Locals (Southern Council), is an agent of the Joint Council for the purpose of representing certain FSIS employees in the unit described above. At all material times Charles Stanley Painter was a Vice President of the Southern Council and employed by FSIS as a Food Inspector, GS-1863-8, based at Collinsville, Alabama.

B. Relationship By Objectives Action Plan (RBO)

On September 30, 1993, FSIS and the Joint Council entered into a Memorandum of Understanding (MOU) incorporating a January 1993 Interim RBO. The MOU stated that the RBO "in all respects, is a collective bargaining

agreement and represents an attempt on the part of the NJC and FSIS to improve labor management relations."

Under "LABOR MANAGEMENT COOPERATION" the RBO provides "Both management and labor at all levels will commit to a cooperative working relationship through the following: . . . i. Demonstrate Respect." The RBO also states that the responsibility for achieving these goals is placed with "NJC/FSIS Mngmt."

Under "OTHER" the RBO provides "5. Union will concern themselves with union representational business only. Management will keep out of union internal affairs" and that "Parties will make a concerted effort to respect each others role." The RBO also states that the responsibility for achieving these goals is placed on "NJC/FSIS Mngmt." Also under "OTHER", the RBO provides, "7. Management and the union will deal openly and honestly with each other" and that, "Both sides should make a concentrated effort to deal with issues and not personalities" and "Stop employee abuse where it exists." The RBO also states that the responsibility for achieving these goals is placed on "Chairman (NJC) Administrator."

Other language appeared in earlier RBO drafts, but was deleted or changed.

The RBO was not intended to take away any rights granted by the Statute and the RBO did not limit or take any Statutory rights from the Union. The RBO was not intended to limit a union representative's right to engage in free and robust debate or to engage in activity not considered flagrant misconduct. The phrase "higher standard" does not appear in the RBO.

C. Use of Profanity

The record establishes that for a number of years, including after September 1993, the parties used profanity extensively and commonly during labor-management meetings. Both Union and FSIS representatives either heard or even used profanity including, but not limited to, (words such as shit, prick, fuck, bastard, asshole) during labor-management meetings or in their dealings with each other side, including meetings with Loret de Mola, FSIS Jackson District

Office Director.[1] These expressions were used to describe one another or to describe others' positions. There was a culture of dealing between the parties of using such language in their various labor-management meetings. Expressions such as "you're full of shit" or similar expressions were commonly used during labor-management meetings and the various participants had been abused often in labor management meetings by such derogatory or foul language.

Painter himself had attended at least 100 labor-management meetings -- from the plant to the national level -- over the course of several years as a representative of the Union. At these meetings both sides used the words "shit," "God damn," "crock of shit," and "you're full of shit." In addition, both sides called one another "asshole," "bastard," and "slimeball" on a regular basis. Painter never attended a labor-management meeting in which both sides did not use some such form of profanity.

No FSIS employee had been disciplined for using such language in labor-management meetings or discussions prior to the instance of the discipline of Painter.

Thus, it was a profanity-laced environment of labor-management relations and dealings. It is undisputed that not only did management representatives tolerate the use of such language, they made no attempt to hide it and regularly used it themselves in their dealings with the Union.

D. Painter and de Mola Meetings

1. Initial Dealings

As part of a reorganization in 1997, FSIS created the Jackson District made up of inspection operations in the states of Alabama, Mississippi, and Tennessee and headed up by de Mola as District Manager. The Union represented some 800 bargaining unit employees located in Alabama and Mississippi. Delmer Jones, Southern Council President and Joint Council Chairman, delegated to Union Vice President

[1] I find the testimony of de Mola to be unreliable and inconsistent with the surrounding circumstances and the testimony of the other witnesses. Painter's testimony is consistent with surrounding circumstances and the testimony of the other witnesses. Accordingly I credit Painter's testimony and do not credit de Mola's. This applies to their testimony concerning the use of profanity and the occurrences at the March 26 meeting.

Painter the responsibility to hold contractually mandated quarterly labor-management consultations with de Mola. Painter had no concurrent work-related dealings with de Mola flowing from his position as a Food Inspector based in Collinsville, Alabama. Painter received his work instructions from Circuit Supervisor Theodore Mayfield, not from de Mola.

In September 1997, Painter and de Mola held their first quarterly labor-management meeting. At this first meeting de Mola told Painter that he had "heard about him" and mentioned the large number of grievances that Painter had filed as a local union president. In addition, when discussing a hiring ceiling, de Mola told Painter that higher-level management should send him one of "those God-damn GS-13s" who, according to de Mola, "were not doing anything." de Mola used similar language in other conversations with Painter.

de Mola and Painter held a second quarterly labor-management meeting in December 1997. Painter was "aggressive" in this December 1997 meeting. During each of these meetings, de Mola addressed Painter as "Painter," whereas Painter referred to de Mola as Dr. de Mola.

2. The Washington Meeting

On March 18, 1998, Painter and de Mola attended a national "Relationship By Objectives" meeting in Washington, D.C. to discuss various labor-management concerns. All 18 FSIS District Managers, Labor management relations staff, and Union representatives attended. At this meeting, each of the District Managers and their Union counterparts were asked to "open up" to one another and discuss the status of their relationships with one another. Painter described his relationship with de Mola as follows:

> [T]he relationship was not good. Every time that I dealt with Dr. de Mola, it was real hard to deal with him, that it was -- if he went into the meeting and did not recognize parallel levels of dealing, he wanted to be -- and I said this, he wanted to be the dictator. He wanted to rule the meeting and that he just -- he did not want to deal with the Union.

de Mola responded that Painter had launched a "personal attack" on him; that Painter was difficult to deal with; and that de Mola dealt in facts and not in lies.

Thus, by the time the meeting in Washington had ended, Painter had stated in front of the other participants that de Mola was a dictator and was difficult to deal with. de Mola characterized Painter's comments as a "personal attack" on him.

3. The March 26, 1998 Meeting

Painter attended the next quarterly labor-management meeting with de Mola in Jackson on March 26, 1998. Painter attended in the capacity as Acting Union President. The meeting, which began at 8:00 am, was held in a private conference room at the Jackson District Office around a conference-type table. Painter and de Mola sat across the table (about four feet) from one another. The door was closed. Only de Mola and Painter were in the room. Other employees in the office could not hear the discussion between de Mola and Painter.

Painter and de Mola discussed a problem with travel voucher payments, staffing of egg plant relief positions, a mandatory employment ceiling, and priority filling of slaughter positions. Painter then told de Mola that some employees had complained that management was not following mandatory guidelines in appraising their work performance. Painter asked de Mola to provide him with copies of all of the documents that managers used to rate the performance of bargaining unit employees. de Mola then responded by asking Painter sarcastically, "Painter you don't have a contract?" After de Mola and Painter disagreed over the contents of Painter's document request, de Mola, yelling, told Painter that he was a liar, that he was nothing but a liar, and that everything he said was a lie.

de Mola repeated to Painter that Painter was a liar a number of times. He also wondered how Painter could sleep at night because of all the lies Painter told. de Mola then stated that Painter tried to make de Mola’s life miserable. Painter then asked de Mola if he was doing a good job at it, and de Mola responded "yes." Painter then said, "at least I am doing a good job at something," to which de Mola responded: "I can't believe you said that, I'm going to write that down."

Painter then, leaning forward in his seat, stated: "[W]hile you're writing [that] down you write this down,

you're a little shithead too."[2] At no point did Painter physically threaten de Mola.

de Mola then terminated the meeting. de Mola did not direct Painter to leave the District Office, but, instead, he told Painter to take as much time as he needed.

E. The Suspension

On April 10, 1998, FSIS Employee Relations Specialist Jack Meyer notified Painter that FSIS proposed to suspend him for five days for "conduct prejudicial to the best interest of the Service (use of derogatory, discourteous and inappropriate language toward an FSIS employee)" because "as a represen-tative of the [Union]" at a "scheduled quarterly [labor- management relations] meeting," he told de Mola to write down that de Mola was "a miserable little piece of shit." Meyer referred to Painter's statement as a "highly offensive epithet."

On June 12, 1998, James Duoos, Employee Relations Officer, upon Meyer's recommendation, notified Painter that he had decided that Painter had engaged in "prejudicial conduct" and that he would be suspended for five days. Meyer stated that, in making his decision to suspend Painter, he considered the reprimand previously issued to Painter in 1993 for referring to foreign-born FSIS employees as "camel jockeys."[3]

Painter served his suspension July 20, 1998 through July 24, 1998. The record herein indicates that Painter is the only Union representative whom FSIS has disciplined for such conduct.

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[2] Painter testified:

> And we were heated . . . I had been called a liar so many times, I had kept my cool for a while, but after repeatedly being called a liar, I was not happy at that point, and then the gaul of him to say that he was going to write down something I said after he had called me a liar numerous times, was just about the end of that.

[3] Meyer acknowledged at the hearing that he would have recommended that Painter be disciplined even in the absence of this reprimand.

Discussion and Conclusions of Law

The GC of the FLRA contends that FSIS violated section 7116(a)(1) and (2) of the Statute when it suspended Painter for five days for referring to de Mola as a "little shithead." GC of the FLRA argues that Painter's statement, in the circumstances in which he made it, was protected by the Statute and did not constitute flagrant misconduct.

A. The Statute

The Statute provides, in pertinent part:

§7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right-

> (1) to act for a labor organization in the capacity of a representative and the right, in that capacity,, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
>
> * * * * *

§7116. Unfair labor practices

(a) For the purposes of this chapter, it shall be an unfair labor practice for an agency-

> (1) to interfere with, restrain, or coerce any
> employee in the exercise by the employee of any right under this chapter;
> (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
>
> * * * * *

B. Painter's Actions Were Protected by the Statute and Did

Not Constitute Flagrant Misconduct.

Section 7102 of the Statute guarantees employees the right to form, join, or assist any labor organization, or to 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, 1402 (1992). 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. *Department of the Navy, Naval Facilities Engineering Command, Western Division San Bruno, California*, 45 FLRA 138, 155 (1992) (*Naval Facilities*); *Department of the Air Force, Grissom Air Force Base, Indiana*, 51 FLRA 7, 11 (1995) (*Grissom*) (union representative's remarks to management representative that she was "fucking stupid" several times was not flagrant misconduct); *Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington*, 2 FLRA 54 (1979), (union chief steward shook fist in the face of foreman and said "I am going to get your ass"); *Department of Treasury, Internal Revenue Service, Memphis Service Center*, 16 FLRA 687 (1984), (steward called supervisor a "fool" while representing an employee the supervisor had placed on AWOL); *Department of Health and Human Services, Social Security Administration, and Social Security Administration Field Operations, Region II*, 23 FLRA 648 (1986)*(Health and Human Services)*, (manager calling union representative a "little union shit" during a disagreement concerning official time did not violate the Statute); *Department of the Air Force, 63rd Civil Engineers Squadron, Norton Air Force Base, California*, 22 FLRA 843 (1986) (manager's statement to union representative if he was going to "stir shit" he should plan on getting some on himself did not violate the Statute); *see also Air Force Flight Test Center, Edwards Air Force Base, California*, 53 FLRA 1455, 1456 (1998) (union representative leaning over a supervisor's desk and pointing finger at supervisor while engaged in protected activity was not the type of unprovoked physical response in a labor-management dispute which the Authority has found "beyond the limits of acceptable behavior").

Consistent with § 7102, 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*, 34 FLRA 385, 389 (1990). 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*, 45 FLRA at 156.

In determining whether an employee has engaged in flagrant misconduct, the Authority balances the employee's right to engage in protected activity, which "permits leeway for impulsive behavior,. . . against the employer's right to maintain order and respect for its supervisory staff on the jobsite." *Department of Defense, Defense Mapping Agency_ Aerospace Center, St. Louis, Missouri*, 17 FLRA 71, 80 (1985) (*DMA*). Relevant factors in striking this balance include: (1) the place and subject matter of the discussion; (2) whether the employee's outburst was impulsive or 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. *DMA*, 17 FLRA at 80-81. The foregoing factors need not be cited or applied in any particular way in determining whether an action constitutes flagrant misconduct. *Grissom*, 51 FLRA at 12.

In this case, the evidence is undisputed that Painter did not make the statement in front of other employees on the job site or that it disrupted the work of the unit. The evidence is clear that Painter's language was impulsive rather than designed and was provoked by de Mola calling Painter a liar. Furthermore, when examined as a whole, in context, and in the culture of the use of profanity that the parties had established through their regular course of dealing, Painter's statement was not of such an outrageous and insubordinate nature as to remove it from the protection of the Statute. In this regard, Painter's remark was similar to remarks used on a regular basis by FSIS and Union representatives in their day-to-day dealings with one another.

Accordingly I conclude, in agreement with the Authority's decisions, that Painter's remark, although in bad taste, does not constitute flagrant misconduct. Painter's comment, made while he engaged in protected activity on behalf of the Joint Council, was not sufficiently egregious to justify the Respondent's discipline of Painter.

C. The Union Did Not Waive its Statutory Rights by entering into the RBO.

The Authority determines the meaning of the parties' agreement in order to resolve the alleged unfair labor practice, and will apply the same standards and principles

in interpreting collective bargaining agreements as applied by arbitrators in both the Federal and private sectors and the Federal courts under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185. *Department of Health and Human Services, Social Security Administration*, 47 FLRA 1206, 1210-11 (1993) (*HHS)*.

The Authority focuses on the interpretation of the express terms of the collective bargaining agreement, and the meaning of any agreement must depend on the intent of the contracting parties. The Authority also determines whether "that intent is established by the language of the clause itself, by inferences drawn from the contract as a whole, or by extrinsic evidence." The Authority has specifically authorized its administrative law judges "to interpret the parties' agreement and resolve the allegations of the unfair labor practice complaint." *HHS* at 1211.

Under any reasonable interpretation of the provisions of the RBO, FSIS's contention that the RBO established a "higher standard of dealing" on the part of the Union is unsupported. The record fails to establish that the Union, by entering into the RBO, waived the right of its representatives to engage in free and robust debate or to make it easier for such conduct to be deemed flagrant misconduct. There is simply no evidence of any clear and unmistakable waiver by the Union of any protected right in the context of this case. Therefore, FSIS's "higher standard" defense is rejected. *See, e.g., United States Army Signal Center and Fort Gordon, Fort Gordon, Georgia*, OALJ 97-14 (1997) (slip op. at 10).

D. FSIS Violated § 7116(a)(1) and (2) of the Statute

Authority case law makes clear that, in the circumstances of this case, Painter's remarks, although in bad taste, did not constitute flagrant misconduct. In the absence of any such flagrant misconduct, FSIS's discrimination against Painter was unlawful because it was motivated by Painter's protected activity. *Federal Bureau of Prisons, Office of Internal Affairs, Washington, D.C.*, 53 FLRA 1500, 1515 (1998). Accordingly, I conclude Respondent violated section 7116(a)(1) and (2) of the Statute by suspending Painter for statements he made during the March 26, Labor-Management meeting.

V. THE APPROPRIATE REMEDY

A Make-Whole Remedy is Appropriate in these Circumstances.

Remedies for unfair labor practices should, "like those under the [National Labor Relations Act], be 'designed to recreate the conditions and relationships that would have been had there been no unfair labor practice.'" *United States Department of Justice, Bureau of Prisons, Safford, Arizona*, 35 FLRA 431, 444-45 (1990) (*Safford*) (quoting from *Local 60, United Brotherhood of Carpenters & Joiners v. NLRB*, 365 U.S. 651, 657 (1961)). Remedies must also "effectuate the policies of the Statute." *Id.* at 445. The Authority commonly uses a cease-and-desist order accompanied by the posting of a notice to employees, which are provided in virtually all cases where a violation is found. *See, e.g., F.E. Warren Air Force Base, Cheyenne, Wyoming*, 52 FLRA 149, 161 (1996). In discrimination cases, like the instant case, a "make-whole" remedy is appro-priate. *See, e.g., Grissom*, 51 FLRA at 13 ("The Authority will order a make-whole remedy where there is discrimination in connection with conditions of employment based on unlawful consideration of protected union activity . . . .").

A fundamental consideration in formulating remedies is whether a traditional remedy will "adequately redress the wrong incurred by the unfair labor practice." *Safford* at 444. As part of this consideration, the Authority examines the requested "nontraditional" remedy and determines "whether the remedy is reasonably necessary and would be effective to recreate the conditions and relationships with which the unfair labor practice interfered. *Safford* at 444-45.

The Authority held in *Grissom:*

> In this case, there is no evidence or contention that the Respondent would have disciplined Smith in the absence of consideration of the remarks he made at the negotiation session. Therefore, we find that a make-whole remedy, requiring that the Respondent expunge the suspension from Smith's records and make him whole for loss of pay and benefits he incurred, is appropriate and necessary to effectuate the purposes and policies of the Statute. Accordingly, we will order the Respondent to: (1) rescind Smith's 14-day suspension; (2) expunge all references to the suspension from Smith's personnel records and any other agency files; (3) make Smith whole for any backpay, including interest, and benefits lost due to the suspension.

51 FLRA at 13 (emphasis added) (Footnote omitted). The Authority's reasoning in *Grissom* is clearly applicable to this case, and a make-whole remedy is appropriate.

Having concluded that U.S. Department Of Agriculture, Food Safety and Inspection Service, Washington, D.C., violated section 7116(a)(1) and (2) of the Statute, I recommend 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, the U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, D.C., shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees by disciplining Charles Stanley Painter or any representative of the National Joint Council of Food Inspection Locals, American Federation of Government Employees, AFL-CIO, the exclusive representative of a unit of its employees, for protected conduct engaged in while performing union representational duties.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Rescind the 5-day suspension given to Charles Stanley Painter, expunge from its files all records of and references to this suspension, and make Painter whole by reimbursing him for the losses he incurred as a result of the 5-day suspension, including backpay with interest, and any other benefits lost due to the suspension.

(b) Post at its facilities located in Alabama and Mississippi, where bargaining unit employees represented by the National Joint Council of Food Inspection Locals, American Federation of Government Employees, AFL-CIO, 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 Food Safety and Inspection Service Administrator, and they shall be posted and maintained for 60 consecutive days thereafter

in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, 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, D.C., June 29, 1999

SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, D.C., violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees by disciplining Charles Stanley Painter or any representative of the National Joint Council of Food Inspection Locals, American Federation of Government Employees, AFL-CIO, the exclusive representative of a unit of our employees, for protected conduct engaged in while performing union representational duties.

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

WE WILL rescind the 5-day suspension given to Charles Stanley Painter, expunge from our files all records of and references to this suspension, and make Painter whole by

reimbursing him for the losses he incurred as a result of the 5-day suspension, including backpay with interest, and any other benefits lost due to the suspension.

Date:_____ By:_____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, NE, Atlanta, GA 30303, and whose telephone number is: (404) 331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. WA-CA-80531, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: June 29, 1999
Washington, DC