



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-44

FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
POLLOCK, LOUISIANA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1034

CHARGING PARTY

Case No. DA-CA-12-0282

Jayne Ricco
Charlotte Dye
For the General Counsel

Stuart Bauch
For the Respondent

Brian Richmond
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

A correctional counselor at a prison was suspected of having an inappropriate relationship with an inmate and engaging in other misconduct. Two agents from the U.S. Department of Justice, Office of Inspector General, visited the prison to interview the counselor about the allegations. The employee claims that she requested, and was denied, union representation immediately before the interview began. Witnesses for the Respondent claim that the employee did not request a union representative.

There are two main questions before me. The first is whether the Office of Inspector General collaborated with prison management during the investigation to such an extent that the prison can be held liable for any unfair labor practice committed by the Office of Inspector General during the interview. Because prison management gave only logistical assistance in the investigation, the answer to this question is no. The second question is whether the employee in fact requested union representation. Because the evidence is more credible and persuasive that the employee did not request a union representative, the answer to the second question is also no.

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. part 2423.

On April 24, 2012, the American Federation of Government Employees, AFL-CIO, Local 1034 (the Union) filed an unfair labor practice charge against the Federal Bureau of Prisons, Federal Correctional Complex, Pollock, Louisiana (Respondent or FCC). As relevant here, the charge alleged that the Respondent violated the Statute when an agent from the U.S. Department of Justice, Office of Inspector General (OIG) denied an employee's request for a union representative during an examination conducted on January 24, 2012. GC Ex. 1(a). After investigating the charge, the Regional Director of the FLRA's Dallas Region issued a Complaint and Notice of Hearing on January 31, 2013, alleging that two OIG agents denied the employee's request for a union representative at the January 24, 2012, examination, and by such conduct the Respondent violated § 7114(a)(2)(B) of the Statute, thereby committing an unfair labor practice under § 7116(a)(1) and (8) of the Statute. GC Ex. 1(c). The Respondent filed its Answer to the Complaint on February 25, 2013, denying that it violated the Statute. GC Ex. 1(d).

A hearing was held in this matter on May 1, July 31, and August 1, 2013, in Alexandria, Louisiana. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The FLRA's General Counsel (the GC) and the Respondent filed post-hearing briefs, which I have fully considered.

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

FINDINGS OF FACT

The Respondent is an activity within the U.S. Department of Justice, which is an agency within the meaning of § 7103(a)(3) of the Statute. *See U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Forrest City, Ark.*, 57 FLRA 787, 787 (2002) (*Forrest City*). The American Federation of Government Employees (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the exclusive representative of a nationwide bargaining unit of employees of the Federal Bureau of Prisons (BOP) that includes employees at the FCC. GC Exs. 1(c) & 1(e). The Union is an agent of AFGE for the purpose of representing bargaining unit employees at the FCC. *Id.*

This case involves an interview that took place at the FCC, a prison complex hosting a minimum security prison camp, a medium security Federal Correctional Institution (FCI), and a maximum security U.S. Penitentiary (USP). Tr. 77, 160, 185. The FCC has its own investigative staff, referred to as SIS, which is in the FCC warden's chain of command. Tr. 212-13, 240-42. It handles a variety of investigations involving inmates and employees, and it serves as the FCC's chief liaison with outside law enforcement agencies. Tr. 351. The SIS has offices in administrative areas adjacent to the FCI and the USP. Tr. 160-62, 185-88.

Two other organizations, the BOP's Office of Internal Affairs (OIA) and the U.S. Department of Justice, Office of Inspector General, have investigative authority regarding the federal prison system, although each is outside the chain of command of any individual prison. Tr. 219, 431. The OIA is a component of the BOP and is headquartered in Washington, D.C. Allegations of misconduct are reported to the OIA, either by the warden or by the SIS; OIA screens the allegations and forwards the more serious ones to the OIG. Tr. 210-11, 255, 397. OIA does not station its agents at the FCC or other prisons. Tr. 219.

The OIG is an autonomous component within the U.S. Department of Justice and is not within the organizational structure of the BOP at all. Tr. 208, 436. OIG investigates only a small percentage of the complaints it receives, which generally involve potential criminal (as opposed to administrative) misconduct.¹ Tr. 437, 444. Generally, employees can be disciplined for failing to cooperate with an OIG investigation. GC Ex. 3 at 5, 11.

Although the OIG investigates matters independently, there is some level of coordination between OIG, OIA, and the prison facility regarding an investigation. For example, when OIG investigates a matter at an institution, OIA acts as the liaison between OIG and the institution. Tr. 409. The SIS staff at the prison assists OIA or OIG agents in obtaining an office to interview inmates and employees, ensuring that an employee is available to be interviewed, and answering technical questions about the institution. Tr. 256-

¹ If OIG does not take a case, it refers the case back to OIA, which in turn oversees investigations by an institution's SIS office. *See* Tr. 224.

57, 355. Once an OIG or OIA investigation has ended, the director of the activity conducting the investigation submits a report to the warden of the institution affected by the investigation. *See* Tr. 414, 442. The warden then determines whether discipline or other action is warranted. Tr. 216.

“K” is a correctional counselor at the FCC. Tr. 50. In November and December 2011, SIS agents at the FCC received information suggesting that K might be delivering contraband to an inmate. GC Exs. 4, 5, 6; Tr. 294, 352. On December 21, 2011, Special Investigative Agent Gordon Lewis, the head of the SIS office at the FCC, submitted a report on the matter to the warden, and then to the OIA. GC Ex. 16 at 6; Tr. 353. OIA forwarded the allegations to the OIG, and OIG Special Agent Sandra Barnes was assigned to conduct an investigation. GC Ex. 8; Tr. 439-40.

Barnes contacted the SIS office at the prison to arrange interviews of K, other employees, and inmates. Barnes asked for the employees’ work schedules and confirmed that the inmates to be interviewed were still at the institution. Barnes also told SIS the days she would be at the FCC. Tr. 290, 318, 355; GC Exs. 9, 10. According to Lewis, these preparations involved “[b]asically just giving [K’s] work schedule, arranging for a place for [the agents] to interview her; and I think that’s about it.” Tr. 357.

On January 24, 2012,² Barnes and OIG Senior Special Agent Douglas Bruce (both of whom worked out of OIG’s Houston area office) came to the FCC to interview K. Tr. 288-89, 340-41. The varying accounts of what happened that day follow below.

The January 24 Interview, According to K

K started her shift on January 24 at 7:30 a.m. Tr. 464. Shortly thereafter, she was sitting in her office in an inmate housing unit at the FCI when SIS Lieutenant Joseph Ripka called and asked her to come to his office, in one of the FCC’s administrative areas, which was a “pretty good walk away.” Tr. 465. Ripka did not tell K why she was needed, but K assumed it was related to a memo she had submitted regarding “contraband that I had stopped from coming into the institution.” Tr. 51. K testified that when she reached Ripka’s office in the FCI (Tr. 111-12), Ripka told her, “I need you to go in there,” pointing across the hall to an interview room. Tr. 52.

K opened the door to the interview room and saw two OIG agents there. She knew they were OIG agents because she had seen them at the institution previously. *Id.* “When I went in . . . the agent, they just said their names. Then I turned around. I’m like, what’s going on, you know, do I need a union rep? And Ripka pretty much shrugged his shoulders. And the agents just closed the door . . .” *Id.* Asked whether she was directing her questions to the agents or to Ripka, K replied:

² All dates hereafter are in 2012, unless otherwise noted.

It was everybody. I mean, they were standing here and he was right here in front of me as I'm visualizing. And I'm like, don't I get a union rep? You know, I'm standing here with these investigators with him being an SIS and the two OIG agents. I'm like, wait a minute, you all got me in here by myself, don't I get a union rep?

Tr. 53.

When asked where Ripka was standing at that time, she said, "He's in his office sitting behind his desk," on the other side of a "very narrow hallway," about ten feet away from her. Tr. 54-55. While she was standing in the doorway of the interview room, she looked back at Ripka and asked, "don't I get a union rep? But they [the agents] also hear." Tr. 54.

K was also asked whether the OIG agents said anything to her regarding union representation after they closed the door. She said:

As they were shutting the door, it was like, well, the material that we're about to ask you is pretty sensitive and you're not really going to need any union rep due to the fact that they are not attorneys and don't have attorney-client privileges; therefore, they can walk out of the room at any given time and tell anyone exactly what just went on in the case, and the case is confidential.

Tr. 55-56.

I asked K whether the agents told her directly that she could not have a union representative. She replied, "They said they're not – they don't have attorney-client privileges, and anything that says[sic] in here is confidential. So, no, they did not say you cannot have; but they pretty much stipulated that the things that were being conducted in the room needed to be confidential." Tr. 480.

When the interview began, the agents started asking her highly personal questions, including, "[D]o I own any sex toys." Tr. 56. K was "aghast," and "didn't understand why this question came at me." Tr. 56-57. The agents told her that "[t]hey had confiscated a cell phone off of an inmate that had supposedly had my phone number on it. I'm supposedly bringing in tobacco. I'm supposedly bringing cell phones. I'm supposedly having sex with inmates. . . . They were saying I've done all these" things. Tr. 57. K was "in awe in trying to figure out where did this come from, what in the world did this come from?" *Id.* She knew that if she was found to have had an inappropriate relationship with an inmate, she could be "terminated and/or go to jail." Tr. 58. The agents asked her whether she'd be willing to take a polygraph examination, and she said she would be willing to do so. Tr. 59.

During the interview, K left the interview room to retrieve her cell phone from her car, which she then provided to the agents; she did not see Ripka at that time. Tr. 457.

Barnes prepared an affidavit for K, which summarized what was discussed during the interview. K read the affidavit, signed it, and returned it to Barnes. Tr. 62. With that, the interview ended. Tr. 63.

Asked whether she had repeated her request for a union representative during the interview, K stated, "I didn't know what in the world was going on, so I just like, okay. I didn't ask anything. I just answered questions and I didn't – no. I didn't ask any more questions on – I've got to have somebody here, no – I didn't say anything like that." Tr. 459.

After the interview, K went to the office of the warden of FCI Pollock and talked to her about what had happened. Tr. 63. The warden told K that she didn't know anything, and didn't want to know anything, about the investigation, but that K should let the investigation take its course and not worry too much. Tr. 63-64. The warden could see that K was upset from the interview, and she suggested that K seek counseling from the employee assistance program. Tr. 63.

The day after the interview, K's supervisor instructed her to go to the warden's office. Tr. 71. When she got there, Union President Brian Richmond and her supervisor were already there, even though K had not contacted the Union. Tr. 71-72. K was informed that she would not be allowed to work within the secure areas of the institution until the investigation was over, and she was given other work to do for several months. Tr. 66, 72, 457.

Within a few days of the January 24 interview, K went to the Union and advised Richmond that she had been interrogated by OIG agents. Tr. 64. Richmond represented her during the remainder of the investigation. Tr. 68-70.

The January 24 Interview, According to Barnes

OIG Special Agents Barnes and Bruce signed in at the FCI's front desk. Tr. 289. SIS Lieutenant Ripka escorted them to an office where they would interview K, across the hall from Ripka's office. Tr. 290. Ripka left Barnes and Bruce, telling them that he'd be back a short time later. Tr. 291. Subsequently, Ripka opened the door of the interview room; "[K] walked in, and [Ripka] closed the door behind him and he walked off." *Id.* K then looked at Barnes and asked, "What's going on?" *Id.*; *see also* Tr. 325. The agents introduced themselves and informed her that they were conducting an investigation based on allegations against her. Tr. 291.

Either Barnes or Bruce then gave K an "advisory form" with the heading, "Warnings and Assurances to Employee Requested to Provide Information on a Voluntary Basis." GC Ex. 16 at 27. The form states, "You are being asked to provide information as part of an investigation being conducted by the Office of the Inspector General." GC Ex. 16 at 27. On

blank lines, Barnes wrote by hand that the OIG investigation concerned "contraband smuggling, bribery, sexual assault and other employee misconduct." *Id.* The form advises, "This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you if you choose not to answer questions." GC Ex. 16 at 27. The form warns, "Any statement you furnish may be used as evidence in any future criminal proceedings or agency disciplinary proceeding, or both." *Id.* Under the heading "Waiver," the form states, "I understand the warnings and assurances stated above and I am willing to make a statement and answer questions. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me." *Id.* Barnes, Bruce, and K signed the document. Next to their signatures is a handwritten note indicating that the form was signed at 8:28 a.m. *Id.* K did not ask any questions about the form. Tr. 293.

At the hearing, Barnes was asked, "When during this interview, did [K] request union representation?" Tr. 295. Barnes replied, "She didn't." *Id.* Barnes further indicated that K did not refer to the Union or ask for a representative during the interview. *Id.*

About two hours into the interview, the agents discussed allegations of phone messages shared between K and the inmate. Tr. 296; GC Ex. 16 at 27, 31. Barnes recalled that K "volunteered to give us her phone to search [it]." Tr. 296. Barnes informed K that she would need to sign a consent form, and K agreed. K left to retrieve her phone, returning with it about fifteen minutes later. *Id.* She signed the consent form, and Barnes took possession of K's cell phone. Tr. 297.

Subsequently, the agents printed out a three-page affidavit, written up by Barnes, for K to review and sign. Tr. 298. In the affidavit, K denied the allegations made against her and stated that she was willing to take a polygraph examination. GC Ex. 16 at 28-30. K signed the affidavit at 11:24 a.m. and then left the office. Tr. 300, 328; GC Ex. 16 at 28.

An SIS employee escorted Barnes and Bruce back to the FCI front desk when they had completed the interview. Tr. 301. When asked whether they briefed Ripka or anyone else in SIS about the interview, Barnes replied, "I don't remember giving a briefing to anyone." *Id.*

Counsel for the General Counsel asked Barnes, "Did you or your colleague mention anything to [K] about how a union representative does not have attorney/client privilege?" Barnes replied, "No." Tr. 323. I too asked Barnes whether there was a discussion about confidentiality or attorney-client privilege, and she stated, "No. During that interview, as in her affidavit, we discussed the allegations, and I recall her crying and a lot of denials; but at no time did she discuss a confidentiality or union representative." Tr. 333.

Counsel for the General Counsel asked whether it was OIG's practice to dissuade interviewees from asking for union representatives. Barnes replied, "No. If they ask, they get one." Tr. 323. Barnes was also asked whether an agent could "get in trouble" if a supervisor learned that the agent had failed to grant an interviewee's request for a union representative.

Barnes replied, "I've never denied one, so I wouldn't know," and then acknowledged that denying such a request would be against OIG policy and could lead to discipline. Tr. 323-24. When asked whether she talked to the warden after the interview, Barnes stated, "I don't believe I did, but I can't tell you a hundred percent who I talked to right after that; I was there every other week." Tr. 328.

I asked Barnes whether she had discussed the case with OIA. Barnes stated that she hadn't, adding that she had spoken to OIA "maybe two or three times in the past three years." *Id.* Similarly, Barnes stated that she didn't discuss the case with Ripka or anyone else in SIS. Tr. 328-29.

The January 24 Interview, According to Bruce

OIG Agent Bruce was the "secondary agent" in the "K" investigation and was mainly there to take notes and support Barnes. Tr. 343-44. Ripka escorted Bruce and Barnes to the interview room at the FCI and then brought K to the room. Tr. 341-42. "As soon as [Ripka] came in, he opened the door; [K] walked in, closed the door behind her, and left." Tr. 342. When questioned further about this point, Bruce testified that Ripka closed the door to the interview room, not K. Tr. 345. The agents then introduced themselves, showed K their credentials, and provided her with an advisory form, at which point Barnes "explained our purpose for the interview, and that it was voluntary." Tr. 349.

On cross-examination, Bruce was asked, "Do you remember at any time before you started your interview when Mr. Ripka first brought [K] to the room, at any time did [K] stand in the doorway and speak to either Joe Ripka or yourself?" Bruce said, "No." Tr. 343. K first spoke to the agents after she sat down. Tr. 343. At the beginning of the interview, K asked, "What is this about?" Tr. 350. But at no point in the interview did K "use the word 'union'" in any way, ask for a union representative, or say anything about "her rights." Tr. 343, 350. Neither Barnes nor Bruce mentioned anything to K "about how a union representative is not an attorney and would not have attorney/client privilege if they were to sit in on the interview[.]" Tr. 346.

When asked whether either of the agents told K that she could have a union representative, Bruce said, "No, . . . the employee has to request a union rep. . . . that's for the employee to let me know and then at that point we stop and collect a union rep." Tr. 349. He denied that OIG agents attempt to dissuade interviewees from having union representation: "No, I would say it's quite the contrary, in my experience. I've had union representatives actually help me in interviews. . . . So I would invite anyone to sit in, certainly a representative, into those interviews." Tr. 346.

Bruce testified that he took notes during the interview, while Barnes questioned K and prepared the affidavit for K's signature. Tr. 343-44. He had no subsequent role in reviewing the evidence collected in the investigation or preparing a report of the evidence. Tr. 347.

The January 24 Interview, According to Ripka

SIS Agent Lewis or an employee in OIG told Ripka in advance that Barnes and Bruce would be coming to the FCI to interview K. Tr. 377, 368. On January 24, Ripka met Barnes and Bruce in the front lobby of the institution and escorted them to the interview room. Tr. 368-69.

Ripka then went to get K. Tr. 369. Ripka testified that he “walked down the hall to notify [K] in the area where she was working. To the best of my knowledge she was monitoring phone calls,” in an administrative area near SIS. Tr. 377. He stated that he believed K had been transferred from working in a housing unit at the USP to the FCI on January 15, and then to the FCI administrative area on January 23, 2012. Tr. 372. Ripka explained that he knew this because “the question came up when [K] actually started monitoring phone calls, and we inquired with her supervisor at the time,” and “to the best of his recollection, that’s when he thought she had started.” Tr. 378. Ripka acknowledged, however, “I wasn’t part of the process to reassign her . . . to monitor the phone calls.” Tr. 379.

When Ripka saw K, he told her that “she had an interview with OIG,” and he escorted her to the interview room. Tr. 369. Ripka said that he and K “may have had some casual chat” on the way to the interview room, but Ripka was not aware of the full details of what was alleged, and he avoided discussing what he did know with her. Tr. 370, 391. When asked at the hearing, “Did [K] say anything involving the union whatsoever during your walk” to the interview room, Ripka said, “No.” Tr. 370. Similarly, Ripka testified that K did not ask “whether she needed to have a union representative[.]” or “indicate . . . that she wanted to have some type of representative[.]” *Id.*; *see also* Tr. 392.

When Ripka and K arrived at the interview room, Ripka introduced her to the OIG agents. Tr. 369. When asked whether the interview room door was closed when he got there, Ripka said, “No, it was standing open when we got there.” Tr. 393. At that point, “she [K] asked me what it was about. And I said, ‘Well, these agents will explain what’s going on to you.’ I said, ‘This is their investigation.’ And that’s when I left the room and shut the door of the office that they were using for their interview.” Tr. 370.

Ripka was asked why he was “so clear on shutting that office door?” He answered, “So that there’s privacy and confidentiality of the interview . . .” *Id.* He further indicated that this was standard practice for conducting an interview. Tr. 371.

Counsel for the Respondent then asked Ripka whether he recalled K standing in the doorway talking to him or the agents. Ripka replied, “No,” adding that K left the interview room later, while Ripka was working in his office across the hall. *Id.* “[S]he came out, kind of stood and left,” without saying anything to Ripka. Tr. 371-72. While K was out, Ripka asked the agents whether they were finished with the interview, and the agents informed him that K was going to her vehicle to bring them her cell phone, and that the interview would

resume when she came back. Tr. 371. Ripka returned to his office and then saw K go back into the interview room. Tr. 371-72. Ripka said he did not talk with the OIG agents about the interview after it had concluded. Tr. 374.

Ripka testified that all employees attend annual refresher training, where the Union emphasizes their right to have a representative during investigative questioning. Tr. 373-74. If, on January 24, K had asked whether she needed a union representative, Ripka said, "I would have told her" that she was "entitled to one" Tr. 392. Ripka added, "I'm sure [Union President Brian] Richmond can tell you, I've contacted him many times to do that." *Id.* But according to Ripka, K did not ask. Tr. 393.

The January 24 Interview, According to Richmond³

The Union president testified that K contacted him in late January 2012 about an OIG investigation in which she had been interviewed. K advised Richmond that "they told her she was compelled to answer the questions; that she had requested a union representative; and that she was not allowed to have a union representative." Tr. 138. Richmond said he had not been notified in advance about the meeting. Tr. 139. Richmond asked K whether the investigation was complete, and she said "they wanted to do a polygraph later." Tr. 140. Richmond further recalled, "I had told her to get with me, do not go back in the investigation by yourself. When you're notified of any investigation, notify me before you – if anyone from SIS calls you or says go to SIS, make sure you call me first so I can go with you." *Id.*

Richmond further testified that K was reassigned from her normal counseling duties to phone monitoring after the January 24 interview. Tr. 189.

Subsequent Events in the Investigation

About two weeks after the January 24 interview, Barnes emailed Lewis, telling him that K would have a polygraph examination on February 23. GC Ex. 11. On February 23, Richmond came with K to the location where the examination was to take place. Tr. 112, 118-19, 141. Barnes and a polygrapher were waiting there for them (Bruce was not present), and K advised them that she had changed her mind and would not take the polygraph examination. Tr. 119, 143, 304-05. K then left the area. Tr. 120, 143.

On April 23, Barnes informed SIS officials at Pollock that she would be coming back to the FCC to interview K later that week, and one of the SIS agents told Barnes the times when K was scheduled to be working. Tr. 320; GC Exs. 14 & 15. On April 26, Barnes and Bruce interviewed K, who was accompanied by two Union officials, Richmond and Richard Logan. Tr. 111, 117; GC Ex. 16 at 35. Unlike the January 24 interview, which was

³ Richmond attended the first day of the hearing as the Union's representative. Unlike the other witnesses, who were sequestered, Richmond heard opening statements and K's first day of testimony prior to testifying himself, on the second day of the hearing. Richmond was allowed to testify only because the Union representative who was scheduled to testify was unavailable. Tr. 203.

voluntary, K was required to answer the questions at the April 26 interview. Tr. 307; GC Ex. 16 at 35. K testified that the OIG agents didn't object to the presence of the Union representatives or say anything about it. Tr. 69. At the end of the interview, K signed an affidavit summarizing her answers. Tr. 70.

Subsequently, Barnes drafted a report finding no evidence of criminal wrongdoing on K's part. Tr. 310, 312. On May 2, OIG submitted a final version of the report to OIA, with a "customer survey" form attached. GC Exs. 20 & 21. On June 8, OIA Chief John Dignam sent a copy of the OIG investigative report to the FCC warden, stating, "We agree with the findings in this matter and consider this case closed. Since criminal prosecution was declined and no misconduct was sustained administratively" by the OIA, "please notify the subject that the investigation has concluded." GC Ex. 20. Around this time, K learned that the investigation was closed, and she was allowed to go back to working as a correctional counselor. Tr. 72. Subsequently, she received a letter from the warden, dated September 20, confirming that there was no finding of wrongdoing.⁴ Tr. 73-75; GC Ex. 18.

Additional Information About the Relationship Between OIG, OIA, and the FCC

At the hearing, the Respondent called a number of witnesses to testify about investigations involving OIG, OIA, and FCC Pollock.

Gordon Lewis, the head of the SIS office at the FCC, testified that he had "[n]o oversight" over OIG agents generally, and that he was not overseeing Barnes and Bruce on January 24. Tr. 356. Lewis said that Barnes and Bruce did not share with him any information obtained from their January 24 interview of K, nor did they brief him or otherwise discuss the K investigation with him. Tr. 356-58, 364. Similarly, the work of other SIS officials in connection with the K investigation was "[p]retty much the same. [The OIG agents] would have us pull up an inmate roster or something like that; a couple of staff probably escort them to interviews when they like went to . . . interview [an] inmate or something like that, but that was it." Tr. 357.

Robert Westbrook is a Special Agent at the OIA headquarters in Washington, D.C. Tr. 395-96. He oversees local investigations, and he was the OIA headquarters agent responsible for overseeing the K investigation. Tr. 396-97. Westbrook acknowledged that OIA is at least technically responsible for overseeing all staff investigations, including investigations carried out by OIG. Tr. 420; GC Ex. 2 at 10. However, Westbrook stated that once OIG started the K investigation, OIA "was not the investigator" and did not have "any interaction as an investigating body with the subjects or with the local investigators as far as the conduct of that investigation." Tr. 398. Westbrook also stated that he did not discuss the K investigation with OIG. *Id.* John Dignam, the Chief of OIA, indicated that OIA cannot control or oversee OIG investigations, and that OIA has no organizational authority over OIG. Tr. 443, 446.

⁴ The letter states that the investigation was conducted by the "Office of Internal Affairs." GC Ex. 18. Ripka, who helped draft the letter, testified that the letter should have said that the investigation was conducted by the Office of Inspector General, and that the reference to OIA was a mistake. Tr. 383.

Michael Carbajal is the current warden at FCC Pollock. He started working there on November 4, 2012, and was not present during the K investigation. Tr. 206. Carbajal stated that he, as warden, has no oversight over OIG investigations, and that the warden is “typically . . . not involved in any of the investigative process unless it involves a specific, immediate security issue” Tr. 207-08.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel argues that the Respondent violated § 7114(a)(2)(B) of the Statute through the actions of OIG agents Barnes and Bruce and SIS agent Ripka, and that the Respondent is liable for the actions of these agents. In this regard, the GC asserts (and the Respondent does not dispute) that K was a bargaining unit employee, that the January 24 interview was an examination in connection with an investigation, and that K reasonably believed that disciplinary action could result from the examination. Venturing into disputed territory, the GC further asserts that K asked for a union representative, but the agents first ignored her request and then discouraged her from insisting on representation.

Looking first at what happened on January 24, the General Counsel asserts that K asked Ripka for a union representative and Ripka “failed to provide her” one. GC Br. at 12. Specifically, after K requested a representative, Ripka responded by shrugging his shoulders, “effectively ignoring [K’s] request for representation.” *Id.* The GC also contends that K “requested Union representation directly to both the OIG Agents” as well as to Ripka (*id.*), and that “both Ripka and the OIG Agents failed to provide a Union representative in response to [K’s] request.” *Id.* at 6.

The GC argues that Ripka’s testimony about K’s request for union representation is not credible, because Ripka inaccurately testified that K had been reassigned prior to January 24 from counseling duties to monitoring phone calls. The GC insists that K did not get reassigned until after the January 24 interview, and thus Ripka was basing his inaccurate account on second-hand information. *Id.* at 5. Similarly, the GC argues that the testimony of the OIG agents is undermined by an inconsistency between Barnes and Bruce as to whether Ripka or K shut the door behind her after she entered the interview room. The OIG agents were simply trying to corroborate Ripka’s testimony, which was itself flawed. *Id.* at 6.

In addition, the GC claims that K did not waive her right to union representation. Rather, Barnes tried to dissuade K from insisting on union representation and made her feel that she “had no choice but to participate in the interview.” *Id.* at 17-18. Barnes and Bruce also dissuaded K from requesting union representation by telling her that union representatives do not have attorney-client privilege. In this manner, K’s decision to continue the examination without a representative was coerced. *Id.*

The General Counsel also argues that SIS agent Ripka and OIG agents Barnes and Bruce were “representative[s] of the agency,” meaning representatives of the Bureau of Prisons, within the meaning of § 7114(a)(2)(B) of the Statute. The Respondent should be held liable for any violation of § 7114(a)(2)(B) committed by OIG officials during the investigation, because OIG closely collaborated with the Respondent during the course of that investigation. In this regard, the GC asserts that: the OIA works with the OIG on investigations; OIG allows union representatives at interviews “only . . . by virtue of the Bureau of Prisons’ bargaining relationships with the exclusive representative” (*id.* at 15); OIG investigates employees “on behalf of the Bureau of Prisons” (*id.*); employees are generally required to cooperate with OIG investigations; Morton, an employee in the SIS office at the prison, communicated with Barnes regarding K; OIG provides a “customer survey” when submitting its report to OIA; OIA oversees OIG investigations of employee misconduct. GC Br. at 15-17; *see Forrest City*, 57 FLRA at 790. Just as the Authority found that agents of the Department of Homeland Security, Office of Inspector General were representatives of Customs and Border Protection, for purposes of investigatory interviews, in *U.S. Dep’t of Homeland Sec., U.S. Customs & Border Prot.*, 66 FLRA 904 (2012) (*DHS*), the Respondent should be held liable for the actions of OIG. GC Br. at 14-15.

Moreover, as a policy matter, the GC argues that a failure to hold the Respondent liable for OIG’s actions would “reduce . . . employees’ statutory rights to a nullity.” *Id.* at 16. The GC insists that the “degree of . . . collaboration between Respondent and OIG is irrelevant[]” in determining whether the Respondent is liable for the OIG’s conduct. *Id.* To support this argument, the GC cites *Def. Criminal Investigative Serv. v. FLRA*, 855 F.2d 93, 100 (3d Cir. 1988) (*DCIS v. FLRA*), *enforcing Dep’t of Def., Def. Criminal Investigative Serv.*, 28 FLRA 1145 (1987) (*DCIS*).

Respondent

Based on the testimony of Barnes, Bruce, and Ripka, the Respondent insists that K did not ask for a union representative in connection with the January 24 interview. R. Br. at 4. Respondent asserts that the testimony of Barnes, Bruce, and Ripka was consistent, and that K’s testimony was less reliable than theirs. Moreover, if K had been denied a union representative at the start of the interview, she had ample opportunity to contact one when she left in the middle of the interview to retrieve her cell phone. *Id.* at 5. Barnes, Bruce, and Ripka all testified that they routinely grant employee requests for union representation in these types of interviews, and that they would have done so on January 24, if K had asked for one. The evidence therefore demonstrates that she did not ask for one that day.

The Respondent further argues that OIG investigated the allegations against K without closely collaborating with staff at the FCC or with OIA; the Respondent therefore cannot be held liable for any § 7114(a)(2)(B) violation committed by Barnes or Bruce. *Id.* at 1-2 (citing *Forrest City*, 57 FLRA at 790; *U.S. Patent & Trademark Office*, 45 FLRA 886 (1992) (*PTO*); *DCIS*, 28 FLRA at 1145). In this regard, the Respondent asserts that its involvement in the January 24 interview was limited to “minor logistical things” such as conveying information about the availability of interviewees, reserving an interview room,

escorting OIG agents within the institution, and escorting K to the interview. There was no "substantive input" by FCC or OIA officials as to how the investigation would be conducted, and FCC and OIA staff were not briefed on the status of the investigation until it was completed. R. Br. at 3-4.

ANALYSIS AND CONCLUSIONS

Section 7114(a)(2)(B) of the Statute sets forth an exclusive representative's right, commonly referred to as the Weingarten right, to be represented at investigative examinations of bargaining unit employees. *U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Coleman, Fla.*, 63 FLRA 351, 354 (2009). In order for this right to be triggered, the following criteria must be met: (1) the meeting must be an examination of an employee by a representative of the agency; (2) the examination must be in connection with an investigation; (3) the employee must reasonably believe that the examination may result in disciplinary action against the employee; and (4) the employee must request representation. *Id.* If the employee makes a valid request for representation, then the agency may grant the request, discontinue the interview, or offer the employee the choice between continuing the interview without representation or having no interview. *See, e.g., Norfolk Naval Shipyard, Portsmouth, Va.*, 35 FLRA 1069, 1077 (1990) (*Portsmouth*).

It is clear in this case that K was a bargaining unit employee at the time of the January 24 interview, that the interview was an examination in connection with an investigation, and that K reasonably believed the interview could result in disciplinary action against her. This leaves two issues to resolve: whether K requested union representation, and if so, whether the Respondent can be held liable for any violations of § 7114(a)(2)(B) committed by the OIG. I answer both of these questions in the negative. While a negative answer to either question is fatal to the Complaint, I will discuss my reasoning on both issues in order to simplify any review of this decision.

The Respondent cannot be held liable for the OIG's conduct during the interview

The Complaint names the Respondent (Federal Bureau of Prisons, Federal Correctional Complex, Pollock, Louisiana) as the party⁵ that committed the unfair labor practice. GC Ex. 1(c), ¶2. The Respondent is an activity⁶ of the Federal Bureau of Prisons, which in turn is a component of the U.S. Department of Justice. Tr. 249; *Forrest City*, 57 FLRA at 787. Neither the Respondent's parent agency, the U.S. Department of Justice, nor the OIG itself, are named as parties. GC Exs. 1(a), 1(c). The GC and the Respondent dispute whether the Respondent can be held liable for the actions of the OIG. Put differently, the parties dispute whether the OIG agents were representatives of the Respondent when conducting the January 24 interview. *See PTO*, 45 FLRA at 891-93; *DCIS*, 28 FLRA at 1148-49.

⁵ As relevant here, a "party" is any agency or activity named as a charged party in a charge or as a respondent in a complaint. 5 C.F.R. § 2421.11.

⁶ An "activity" is any facility, organizational entity, or geographical subdivision or combination thereof, of any agency. 5 C.F.R. § 2421.4.

The facts necessary to prove liability for the conduct of an agency's office of inspector general during an investigation are different for a parent agency and a subordinate activity. A parent agency may be held liable for statutory violations of its office of inspector general even though the parent agency had no involvement in the investigation. *Forrest City*, 57 FLRA at 788 (citing *U.S. Dep't of Justice, Wash., D.C.*, 56 FLRA 556, 560 (2000)). However, a subordinate activity⁷ may not be held liable for statutory violations committed by the office of inspector general unless there has been "close collaboration" between the office of inspector general and the activity during the investigation. *Forrest City*, 57 FLRA at 788 (citing *PTO*, 45 FLRA at 892). Thus the Respondent, as an activity separate from the organizational structure of OIG, cannot be held liable for the conduct of the OIG agents unless it closely collaborated with OIG during the investigation of K.

In cases where the Authority has found collaboration sufficient to hold an activity responsible for the conduct of the parent agency's investigative component during an investigatory interview, several facts have been present, including the presence of the activity's representative at the interview; discussion between the two entities of the statements obtained by the investigator during the interview; meetings throughout the investigation; substantive briefings of the activity by the investigative component; and an active and continuing effort by the activity to be involved in the investigation. *Forrest City*, 57 FLRA at 790 (citing *U.S. Dep't of the Air Force, Ogden Air Logistics Ctr., Hill AFB, Utah*, 36 FLRA 748, 764-68 (1990); *Lackland AFB Exch., Lackland AFB, Tex.*, 5 FLRA 473, 486 (1981)).

In *Forrest City*, a case that also involved the Federal Bureau of Prisons, the Authority found that there was not "close collaboration" between the activity and the OIG. 57 FLRA at 790. Specifically, the Authority found that there was only limited contact between the activity and the OIG during the investigation, there was no substantive input by the activity as to how the investigation would be conducted or any substantive briefings of the activity by the OIG. *Id.* Further, the Authority found that there was not close collaboration between the two entities, even though: the activity initiated the investigation and referred it to the OIG; the OIG and the activity arranged the date, time, and place for the interview; the entities exchanged the case file; the OIG agents informed a representative of the activity of their arrival and departure on the day of the interview; an activity representative escorted the OIG agents within the building; the activity summoned the affected employee for an interview to a room it provided; an activity representative could hear a subsequent polygraph examination from an adjacent room; and activity representatives were informed of the results of the polygraph examination. *Id.* (citing *PTO*, 45 FLRA at 886; *DCIS*, 28 FLRA at 1145).

⁷ It is worth noting that the FCC is a subordinate activity of DOJ, but not of OIG. Both the FCC and OIG are subordinate entities of DOJ, but the FCC is in an entirely separate chain of command from OIG.

Here, Barnes and Bruce conducted the interview without any representatives of the Respondent present (there also were no representatives of the Respondent at the other interview, held on April 26). Although Ripka entered the interview room while K was getting her cell phone, he did so only to see if the interview had ended; he did not discuss the substance of the interview with the agents. After the interview, Barnes and Bruce did not discuss what K had said with Ripka or other officials of the FCC, and Barnes and Bruce did not have substantive meetings or briefings with officials of the FCC about the investigation. Further, there is no evidence that anyone else from OIG discussed the investigation in any substantive way with representatives of the Respondent. Moreover, while it is true that OIA may have acted as a liaison between the FCC and OIG, there is no indication that OIA participated in the K investigation in any substantive way.

Although there was *some* interaction between OIG and the Respondent, this did not rise to the level of “close collaboration” as understood under *Forrest City* and the related case law. In this regard, Barnes communicated at times with SIS staff at the prison, but such contact was limited to short messages concerning logistical matters; for instance, to notify FCC staff when the OIG agents would be at FCC Pollock, and to arrange for the availability of witnesses. Months after the January 24 interview, SIS Lt. Morton sent Barnes a short email (GC Ex. 13) to let her know that K had contacted him, but the circumstances suggest that Morton was trying to avoid being entangled in the investigation, not that he was collaborating in the investigation with Barnes. Other small instances of collaboration – Lewis helping to initiate the investigation and referring the matter to the OIA; Ripka escorting the OIG agents and K to the interview room – do not indicate that the Respondent was collaborating closely with the OIG. Rather, these examples reflect the purely superficial role of the Respondent’s staff: since the witnesses in the investigation were all located at the FCC, the OIG agents had to keep in touch with FCC staff and utilize them for logistical assistance, but no official of the Respondent played any substantive part in the investigation itself or the determination of culpability. The GC finds it significant that OIG sent a “customer survey” along with its final report, but that is very different from the types of collaboration found to be meaningful in *Forrest City* and similar cases.

Of course, if Ripka (who worked for SIS at the FCC and was clearly a “representative of the agency” within the meaning of 7114(a)(2)(B)) denied a request by K for union representation just prior to the January 24 interview, his actions would tie the Respondent directly to a violation of the Statute. In that case, there would be no need to determine whether OIG was a representative of the Respondent. However, as I will explain below, K did not ask Ripka for union representation. Accordingly, the record is devoid of evidence of close collaboration between the Respondent and OIG.

The General Counsel raises several arguments to the contrary, but none are convincing. The GC contends that there was close collaboration between the OIG and the Respondent because: (1) OIG allows union representatives “only . . . by virtue of the Bureau of Prisons’ bargaining relationships;” (2) OIG investigates employees “on behalf of the Bureau of Prisons;” and (3) because employees are “required to cooperate with OIG

investigations.”⁸ GC Br. at 15. However, these factors were equally present in the *Forrest City* and *PTO* cases as well. Moreover, *Forrest City* indicates that the Authority looks for concrete examples of collaboration – joint participation in interviews, meetings and briefings, for example – rather than the more abstract connections alleged by the GC. See 57 FLRA at 790.

The General Counsel cites the Authority’s decision in *DHS* to support its argument that the Respondent can be held liable for the actions of OIG. In *DHS*, an arbitrator found that while agents of DHS’s Office of Inspector General had complied with § 7114(a)(2)(B) of the Statute when interviewing CBP employees, CBP violated its contract with the union, because OIG personnel had violated additional procedural safeguards for interviewing CBP employees. 66 FLRA at 904-05. In concluding that OIG was a representative of CPB, the arbitrator considered, and rejected, the agency’s reliance on *Forrest City*; instead he found that the cooperation between CBP and OIG was more extensive and justified holding CBP liable for the actions of OIG agents. *Id.* at 905-06. Since the levels of cooperation between the subordinate activities and the IG offices of DHS and DOJ were found to be significantly different in the *DHS* decision, it would make no sense now to ignore those differences. It is also significant that the *DHS* case involved the review of an arbitrator’s award in a contract grievance between CBP and its exclusive representative. The union representing CBP employees could not file a grievance against DHS’s OIG. In the current unfair labor practice case, however, there was nothing to prevent the General Counsel from issuing a complaint against DOJ’s OIG, or against DOJ itself, in addition to the Respondent. In the circumstances of our case, *Forrest City* is the appropriate precedent regarding agency liability, not *DHS*.

The General Counsel also asserts that failing to hold the Respondent liable for any unfair labor practices committed by the OIG would reduce employees’ rights to a “nullity.” GC Br. at 16. But that is not so. As already discussed, a subordinate activity may be held liable for § 7114(a)(2)(B) violations committed by IG agents if the activity closely collaborated with the office of inspector general during the investigation. See *Forrest City*, 57 FLRA at 790. And in cases such as this one, where there was no such collaboration, the GC can vindicate the rights of employees under § 7114(a)(2)(B) by charging the party that actually committed the allegedly unlawful act – OIG itself – or its parent agency. See *id.* at 788; *Headquarters, NASA, Wash., D.C.*, 50 FLRA 601, 620-22 (1995), *enforced*, *FLRA v. NASA*, 120 F.3d 1208 (11th Cir. 1997), *aff’d*, 527 U.S. 229 (1999).

Finally, the GC argues that the degree of collaboration between the Respondent and the OIG should be irrelevant, based on *DCIS v. FLRA*. GC Br. at 16. In that case, the United States Court of Appeals for the Third Circuit upheld the Authority’s determination that an investigator from the Defense Criminal Investigative Service, a component of the Department of Defense’s Office of Inspector General, was acting as a representative of DOD under

⁸ While it may be true generally that employees must cooperate with OIG investigations, the January 24 interview was voluntary, and no disciplinary action would have been taken against K if she had decided not to answer Barnes’ and Bruce’s questions. GC Ex. 16 at 27.

7114(a)(2)(B) when interviewing two employees of the Defense Logistics Agency (DLA), a subcomponent of the Department of Defense. 855 F.2d at 95-97, 100. In upholding the Authority's decision, the court stated that the degree of supervision exercised by DOD over the affairs of the DOD-OIG was irrelevant in determining whether the DCIS was a representative of the Department of Defense. *Id.* at 100. At the same time, however, the court left intact the Authority's determination that the DCIS investigator was not acting as an agent or representative of the DLA. *See id.* at 98; *DCIS*, 28 FLRA at 1148-49. In our case, the Respondent stands in a comparable organizational position as DLA, not the parent agency. Accordingly, *DCIS v. FLRA* is consistent with the Authority's determination in *Forrest City* that there are circumstances in which a subordinate activity may not be responsible for a 7114(a)(2)(B) violation committed by a parent agency's office of inspector general. *See Forrest City*, 57 FLRA at 790.

To summarize, I conclude that pursuant to *Forrest City*, close collaboration between OIG and the Respondent must exist to hold the Respondent liable for the actions of OIG's agents. Further, I find no evidence of close collaboration between the Respondent and the OIG during the investigation of K. Thus, the OIG agents were not acting as representatives of the Respondent when conducting the January 24 interview, and the Respondent cannot be held liable for what the OIG agents did. *See PTO*, 45 FLRA at 891-93; *DCIS*, 28 FLRA at 1148-49.

K did not ask for a Union representative

Even if the Respondent could be held liable for a § 7114(a)(2)(B) violation committed by the OIG during the January 24 interview, the GC would still need to show that K requested union representation, and that the Respondent failed to appropriately respond to the request, in order to establish that the Respondent committed an unfair labor practice under § 7116(a)(1) and (8) of the Statute. *See, e.g., Portsmouth*, 35 FLRA at 1073. While a request for union representation does not need to be made in a specific form, the request must be sufficient to put the interviewer on notice of the employee's desire for representation. *Id.* at 1074.

Determining whether K asked for a union representative unavoidably requires an evaluation of the credibility of each side's witnesses. In considering their credibility, I acknowledge that none of the key witnesses was a disinterested observer. Barnes, Bruce, and Ripka likely had an incentive, if only unconscious, to justify their own conduct and show that the Respondent did not violate the Statute. Further, Barnes and Bruce might have faced discipline if their testimony revealed that they failed to properly respond to a request for union representation. On the GC's side, K was (apparently) wrongly accused of improper conduct with an inmate and might have wanted to get back at the Respondent for subjecting her to this investigation. The charge was filed while the investigation was still ongoing, and thus she might have perceived the charge as a means of fighting the allegations. Richmond, as the Union's president, had an incentive to support K's testimony as well, and he had the advantage of having heard most of K's testimony before he took the stand. With that said, it is much more likely that events occurred in the way described by the Respondent than in the way described by the GC.

I base this in large part on the fact that the Respondent's three main witnesses provided consistent, and thus credible, testimony on several key points. Barnes, Bruce, and Ripka all testified that Ripka escorted K to the interview room and then left, closing the door behind him. They all testified that K did not stand in the doorway before entering the interview room, and they all testified that K asked, in essence, "What's going on?" before the start of the interview. In addition, Barnes and Bruce both testified that they did not discuss attorney-client privilege or confidentiality with K.

Further, Barnes, Bruce, and Ripka each testified that K did not ask for a union representative. This testimony is bolstered by the fact that these witnesses were familiar with Weingarten rights and regularly granted requests for union representation as a matter of course. Moreover, the fact that Barnes and Bruce did not object to Richmond and Logan attending the April 26 interview supports a conclusion that they would not have denied a request for union representation on January 24.

As one would expect, not every aspect of these witnesses' testimony was identical. For example, Barnes and Bruce testified that Ripka opened the door to the interview room, while Ripka testified that the door was already open. However, these differences are unsurprising given the gap in time between the events and the hearing. Moreover, these differences are relatively trivial. On key matters in dispute, Barnes, Bruce, and Ripka provided similar testimony on the essential details. This consistent testimony indicates that these witnesses testified about these details accurately, which in turn supports a conclusion that these witnesses' accounts are reliable overall.

The General Counsel attempts to cast doubt on the reliability of the Respondent's main witnesses, but it is unsuccessful. First, the GC asserts that while Barnes testified that Ripka shut the door to the interview room, Bruce testified that it was K who shut the door (GC Br. at 6), based on Bruce's statement that, "As soon as he came in, he opened the door; she walked in, closed the door behind her, and left." Tr. 342. The GC's argument is based on a misunderstanding of Bruce's words – a confusion that is understandable, in light of the lack of a pronoun before "closed" in the cited testimony. But the ambiguity of Bruce's testimony was clarified within moments, as he was asked again who closed the door to the interview room, and he said that it was Ripka. Tr. 345. Second, the GC argues that Ripka's testimony is untrustworthy because he erroneously believed that K had been reassigned prior to January 24. GC Br. at 5. Even if he was wrong about the date of K's reassignment, Ripka acknowledged that he based his belief as to when the reassignment occurred on second hand information. This candid admission strengthens, rather than weakens, Ripka's credibility. Further, even if Ripka was wrong about the date of K's reassignment, that fact has no connection to the crucial questions of what occurred in the interview room on January 24. It would not undermine the likelihood that Ripka escorted K into the interview room, a fact to which Barnes, Bruce, and Ripka all testified, and that K did not ask about union representation during the brief moment before the door was closed.

It is true that the fact that Barnes, Bruce, and Ripka had very similar recollections of what took place does not prove that K's version of events – a version in which K entered the interview room without Ripka, stood in the doorway asking for a union representative, and was denied the request – is untrue. However, there are several reasons to doubt the veracity of K's testimony.

Most doubtful is K's claim at the hearing that Ripka denied her request for union representation. If K had made this allegation prior to the hearing, we would expect it to be mentioned in the Union's and the GC's prehearing filings, or at least in the GC's opening statement. But while the Union alleged in its unfair labor practice charge (GC Ex. 1(a)) that Bruce denied K's request for union representation,⁹ and while the GC alleged in its Complaint (GC Ex. 1(c)) and opening statement (Tr. 28-29) that Barnes and Bruce denied K's request for representation,¹⁰ neither the Union nor the GC alleged – prior to K testifying at the hearing (Tr. 52) – that K asked Ripka if she was entitled to a union representative, or that Ripka denied such a request. If Ripka had in fact denied her request, why did she wait until the day of the hearing to say so?

The language of K's alleged request for representation, and the circumstances surrounding it, call the accuracy of her testimony into question. According to her, she opened the door to the interview room, saw Barnes and Bruce (whom she recognized as OIG agents), and "I'm like, what's going on, you know, do I need a union rep?" Tr. 52. The words "what's going on" match precisely what Barnes remembered K saying, and I fully accept that K used essentially those words. But K's use of the phrase "you know," suggests to me that she was unconsciously distancing herself from the words "do I need a union rep." It is a phrase that indicates a way of paraphrasing her actual words. While K may indeed have been wondering, as she went into the interview, whether she needed a union representative, I do not believe she verbalized it.

K's behavior during the interview also makes me question her story. Moments after she allegedly asked for and was denied union representation, she agreed to participate in a voluntary interview with the OIG agents, signing her name on the advisory form, under the heading "Waiver." GC Ex. 16 at 27. About two hours into the interview, K volunteered to retrieve her personal cell phone from her car and then signed a consent form authorizing the agents to search the phone. She also told the agents that she was willing to take a polygraph examination. After making an initial, furtive inquiry about "needing" a union representative when she first entered the room, she did not bring up the subject of a union representative again, throughout the approximately three-hour long interview. While K may have felt intimidated by the agents, it is nevertheless hard to square her claim that she was denied union representation with her significant, voluntary cooperation with the OIG agents.

⁹ The unfair labor practice charge erroneously refers to Douglas Bruce as "Bruce Douglas." GC Ex. 1(a).

¹⁰ The Complaint also refers erroneously to Douglas Bruce as "Bruce Douglas," and it erroneously refers to Sandra Barnes as "Sandra Burns." GC Ex. 1(c).

Further, while K was understandably shaken from the serious accusations leveled at her during the interview, her actions after the interview also make me question whether she was in fact denied union representation at the outset. Immediately after the interview, K did not go to the Union, but instead she went to talk with the FCI warden. There is no evidence that K said anything to the warden about being denied a representative, even though complaining to the warden would have offered the most immediate form of redress. Later, "within a few days" of the interview, K met with the Union. Tr. 64. At the hearing, she did not say much about this meeting, other than that she told the Union, "I was brought in to SIS and I was interviewed by OIG." *Id.* K did not assert at the hearing that she told the Union that her Weingarten rights had been violated.

Richmond attempted to fill in the gaps left by K's vague account of this time period. Specifically, Richmond testified that K told him that "she had requested a union representative; and that she was not allowed to have a union representative." Tr. 138. As I already explained, Richmond's testimony is compromised, and I do not give it much weight. Nevertheless, it is telling that, in Richmond's version of events, K did not name the person or persons who allegedly denied her request. Richmond's description of his response to K's report is also puzzling. He did not ask her for more details and did not talk about filing an unfair labor practice charge over the alleged violation. Instead, Richmond asked K if the investigation was over and advised her not to go into subsequent interviews by herself.

In all, the Respondent's main witnesses provided consistent, credible testimony that fully supported the Respondent's version of events, while the GC's witnesses provided testimony that at times was inconsistent, counterintuitive, and vague. Based on a preponderance of the evidence, I find that K did not ask Ripka, Barnes, or Bruce for a union representative.

CONCLUSION

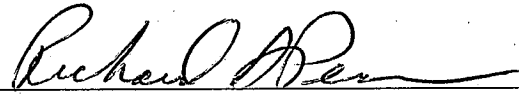
The General Counsel failed to show that OIG agents Barnes and Bruce collaborated with the Respondent generally, or with Ripka in particular, during the K investigation. Accordingly, the GC has not demonstrated that the Respondent can be held liable for any § 7114(a)(2)(B) violations committed by OIG agents Barnes and Bruce during the January 24, 2012 interview. The General Counsel also failed to show that K asked Ripka, Barnes, or Bruce for a union representative, as required by § 7114(a)(2)(B) of the Statute. For these reasons, the GC has failed to prove that the Respondent committed an unfair labor practice in violation of 7116(a)(1) and (8) of the Statute.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

It is ordered that the Complaint be, and hereby is, dismissed.

Issued, Washington, D.C., August 28, 2015

A handwritten signature in cursive script, appearing to read "Richard A. Pearson", written in black ink. The signature is fluid and extends across the width of the text block below it.

RICHARD A. PEARSON
Administrative Law Judge