



**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424

OALJ 18-08

U.S. DEPARTMENT OF THE AIR FORCE  
96th TEST WING, EGLIN AIR FORCE BASE, FLORIDA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO, LOCAL 1897

CHARGING PARTY

Case No. AT-CA-16-0689

Jack W. Roberts, Esquire  
For the General Counsel

Erin Z. Dixon, Maj., USAF  
For the Respondent

Thaddeus Wallace, President  
For the Charging Party

Before: David L. Welch  
Chief Administrative Law Judge

**DECISION**

**STATEMENT OF THE CASE**

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7118 and § 2423.20(a) of the Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority).

On July 7, 2016, the American Federation of Government Employees, Local 1897, AFL-CIO (Charging Party/Union) filed an unfair labor practice (ULP) charge against the Department of the Air Force, 96th Test Wing, Eglin Air Force Base, Florida (Agency/Respondent). GC Ex. 1(a) and Joint Ex. 1. The Union filed its' First Amended Charge in this proceeding on October 28, 2016. GC Ex. 1(b).

After investigating the charges, the Atlanta Regional Director of the Authority filed a Complaint and Notice of Hearing on December 2, 2016, alleging the Agency violated § 7116(a)(1) and (5) of the Statute by bypassing the Union in dealing directly with the complainant without Union representation present and refusing to negotiate in good faith with the Union. GC Ex. 1(c).

On December 16, 2016, the Agency filed Respondent's Answer to Complaint admitting certain factual allegations, denying material allegations and entering a General Denial to violating the Statute. (GC 1(d)).

A hearing was held on August 29, 2017, after an understandable lengthy delay due to the deployment of the Agency's primary witness, Master Sergeant Eric Person (MSgt Person)<sup>1</sup>, on August 29, 2017. GC Ex. 1(e) and 1(g). All parties were represented and afforded an opportunity to be heard, introduce evidence and examine the witnesses. The General Counsel and Agency filed post-hearing Legal Briefs, which the undersigned has reviewed, analyzed and considered.

Based upon the review of the entire record, including my observations of the witnesses and their demeanor, I find the Agency violated § 7116(a)(1) and (5) of the Statute. MSgt. Person, the Radiology Flight Chief, 96th Medical Group<sup>2</sup>, Eglin Air Force Base, Florida (Eglin AFB, FL) personally met on multiple occasions, in private and alone, with the complainant, Manika Lewis (Ms. Lewis), during the pendency of the grievances, with the knowledge of her Union representation, concerning conditions of her employment as a mammographer in one of six (6) departments within the Radiology Department of the Agency's medical facilities on Eglin AFB, FL.

In opening statement, counsel for the Respondent anticipated "...This case boils down to credibility. . . ." Tr. 14. The General Counsel, did not couch their opening statement identically but anticipated significant differences between the anticipated evidence and the legal pleadings of the case. Both counsel are correct. Absent respective advocacy, credibility is within the exclusive purview of the finder of fact. My decision is based upon the witness' personal testimony from the record, and corroborating witness testimony, and the exhibits introduced at trial.

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<sup>1</sup> Master Sergeant Eric Person recently returned from deployment in Afghanistan; he was also previously deployed in Iraq during his tenure with 96<sup>th</sup> Medical Group, Eglin AFB, among other temporary duty assignments. Tr. 126. He is commended for his exemplary military service.

<sup>2</sup> Master Sergeant Eric Person is responsible for approximately 62 employees of the 96th Medical Group, comprised of eight (8) contractors, six (6) Federal General Schedule (GS) employees with the balance of active duty personnel. Tr. 94.

## FINDINGS OF FACTS

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. At all material times, MSgt Person was the Radiology Flight Chief of the 96th Medical Group, Eglin AFB, FL overseeing the Radiology Department, including the Mammography Department, as a managerial supervisor within the meaning of § 7103(a)(10) and (11) of the Statute.

The Union, AFL-CIO, is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of Air Force Material Command, employees, which includes employees of the Respondent (the Unit). The Union is an agent of the American Federation of Government Employees, Local 1897, AFL-CIO (AFGE) for the purposes of representing the Unit employees employed at the Respondent.

Maneka Lewis, the complainant, is an employee of the Agency and is represented by the Union. Ms. Lewis filed two grievances, with the Union's assistance, on May 3, 2016, and June 22, 2016, respectively, alleging a hostile abrasive work environment that was continuing in nature due to her employment relationship with her immediate supervisor, Staff Sergeant Hanna Davis (SSgt Davis). (Jt. Ex. 1-2).<sup>3</sup>

Ms. Lewis utilized the services of the Union through Alan Kerry Cooper, Sr., Executive Vice President, (Mr. Cooper) of the Union. Mr. Cooper filed the complainant's subsequent grievances (Jt. Ex. 1-2) and thereafter was the Union's lawful representative of the Ms. Lewis. Jt. Ex. 4 and A1. Mr. Cooper testified to a single telephone conversation with MSgt Person: "Yes. On the telephone on or about 7 or 8 July 2016." Tr. 67 and A.1 and Tr. 69.

The Agency investigated and responded to the grievances at Step 1 and Step 2, through Colonel David C. Ives and Colonel Mark J. Batcho, respectively. Jt. Ex. 2-3. The Agency denied the grievances at both steps. Colonel Ives and Colonel Batcho were not called as witnesses during the hearing.

Mr. Ronald LaJeuneese testified briefly. At the relevant time in question, he served as a Labor Relations Specialist, specifically assigned to handling the Radiology Department of the Eglin Air Force Support Squadron, advising SSgt Davis, Colonel Ives and Colonel Batcho in arranging the Step 1 and Step 2 grievance procedures. Tr. 151, 157-58. He knew of MSgt Person, but testified that he did not advise him regarding this matter. Tr. 153, 157. Mr. LaJeuneese testified that there were two Human Resource Liaisons in his office, Terry Harrigan and Lisa Downing, but their role was simply to process human resource actions for the command staff, and specifically not to offer advice regarding labor issues. Tr. 152.

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<sup>3</sup> The respective allegations resulting in the Unfair Labor Practice charge appear to have commenced upon SSgt Davis assuming a supervisory role and requesting Ms. Lewis to certify certain records for a Food and Drug Administration inspection. Tr. 16, 80, 81. SSgt Davis was not called as a witness.

The primary issue in the case entails findings of facts regarding the communications between Ms. Lewis and MSgt Person after May 3, 2016, i.e. within three to five days thereafter (Tr. 87) upon the Union assuming representation of the complainant. Both witnesses generally confirmed their communications with each other during this relevant time but differed regarding the subject matter and intent of those admissions.

Ms. Lewis testified that MSgt Person communicated with her, in pertinent part, as follows:

- a. June 30, 2016, MSgt Person approached and asked to speak in private “to discuss the harassment between me and Sergeant Davis, to discuss – that he had some questions for me.” Tr. 20;
- b. She responded that she could not speak to him about that subject due to an active grievance. Tr. 20, 28-29;
- c. She further testified that “He got stern and he stated that he could ask me questions, that he was the radiology superintendent and that he will ask me questions.” Tr. 21.
- d. She testified that “He went on to – basically was accusing me. He said that Sergeant Davis told him that I wouldn’t answer her questions in regards to a CD, and he said that I wasn’t doing my – Sergeant Davis said I wasn’t doing my work and I wouldn’t answer the questions about the CD.” Tr. 21;
- e. She testified to denying SSgt Davis’ charge and testified to the meeting with MSgt Person lasting “about 20 to 30 minutes.” Tr. 21, 22;
- f. On cross-examination, she further testified to having approached MSgt Person earlier than May 3, 2016, on a date not specified: “I did go and speak to him regarding the harassment in the workplace and how I was being treated unprofessionally in front of my co-workers, in front of the patients. So, yes, I did speak, and I spoke to with him to try to handle it at the lowest level prior to filing a grievance.” Tr. 28, 37;
- g. Regarding their meeting on June 30, 2016, she further testified “He stated . . . that Dr. Berrill had ordered him to come up there to speak to me in regards to the harassment between Staff Sergeant Davis and I.” Tr. 29. Further, she testified to “I stated to him – he was discussing the things that went on within the grievance and I stated to him that I could not discuss the grievance with him.” Tr. 38. Further, she testified to “My testimony was he could not discuss anything regarding the hostile work environment, which he was already aware of because I spoke to him prior to filing the grievance. So he was aware of the whole incident prior to, because I discussed it with him trying to resolve it prior to filing the grievance. So he was aware of the incident already.” Tr. 39.

Ms. Lewis’ testimony was specific and consistent – particularly under cross examination.

MSgt Person testified that his communications with Ms. Lewis, in pertinent part, were as follows:

- a. He testified to having known Ms. Lewis for seven years, "I've never had interactions with her before I was flight chief actually, . . . And she didn't fall under me, in my element as something I would have to even work with in mammography. So I never really had any interactions with her till probably like 2 or 3 years ago." Tr. 95;
- b. In first answering whether he recalled a conversation with Ms. Lewis on June 30, 2016: "Like, I've had many conversations. I don't remember exact date of what conversation occurred. I've had a lot of conversations with her." Tr. 97;
- c. He testified: "I think it was in June, maybe in that month also, when her and Sergeant Davis had an incident where they got into it . . . So Davis told me her side of the story, and I went up there to talk to her about it. I don't remember what was all said and everything, but I did talk to Davis about it. Hey, you can't harass – I said that can be looked at probably as harassment maybe. If somebody say, hey, I'm done talking to you –" Tr. 99;
- d. He testified further, "talked to – I did tell Sergeant Davis, and I told Manika what I told Sergeant Davis, that hey, . . . it can be looked at – maybe she can look at it like harassment or something like that." Tr. 99;
- e. He testified, in answer to a question about speaking with Ms. Lewis: "I always talk to her in a room, empty, – I mean, either that room in the back or the room at the front desk, every time I talked to her . . ." Tr. 100;
- f. In answering "Did she ever tell you just to stop talking or –," he testified: "She has said probably before – I think she said this a couple of times, I don't want to talk about it or something like that, to that effect. She never said this is a grievance thing or something. If she would have said that, I would have just left it alone." Further, he testified: " She did say something like I don't want to talk about it, I guess because she was upset or something like – you don't even know what I'm talking about, what I want to talk about." Tr. 100; and "Yes. I came up there, hey, I need to talk – can I talk to you? And she's like, I don't want to talk about it. Like she would get this like real snappy attitude. I'm like, Manika, just hear me out; you don't even know what I'm up here to talk about; just hear me out." Tr. 101;
- g. However, he also reiterated in answering a question about being asked by Ms. Lewis regarding ceasing to talk due to a grievance, "Never. Not to me." Tr. 101;
- h. He initially testified to learning about Ms. Lewis' Union representation: "I guess that day when I talked to Mr. Cooper on the phone. But I always knew she was like – she had, I guess, union representation or –". Tr. 102;
- i. He specifically denied knowing, at the time of these communications, that Ms. Lewis had active grievances filed; further, he testified: "No. Well, I knew of something that she had had in the past years. I knew it was something going on with that. She would always say something like I have a case going on. So that the only I knew she had something going. She was like, I still got a case going on right now. She would say stuff like that." Tr. 102-03;



- j. In response to being asked about his conversations with “H.R.”: “I would ask them like what would – because I wasn’t sure like how much I could get involved with some of the incidences that were going on. So I would go to them and kind of ask them and make sure I wasn’t – I was staying in my lane and not crossing any lanes.” Tr. 105;
- k. Further he testified in response to a question about the timing of his conversations with the Human Relations office, he responded: “When I started hearing about all those problems and complaints when she was like getting into arguments in front of patients and stuff like that. When she was just blatantly being disrespectful saying what she wasn’t going to do, and not doing certain exams, that when I started looking into, okay, this becoming an issue. It’s becoming a problem . . . .” Tr. 105; when asked further about the timing of his conversations with Human Relations office, as to whether they were before or after his conversation with Mr. Cooper, he responded: “Way before.” Tr. 106;

A pertinent summary statement by MSgt Person included: “I just wanted to get down to the bottom of what was going on, like why is there so much conflict? When I would come up there, I just wanted to hear her side of the story and what happened, you know. Sergeant Davis would come down almost daily saying this happened today. I’m like – and I would have – I’m like, hey, it can’t be that much going on up there every day. So if she came down and talked to me, if I thought it was something like worth even discussing, I would go up and, hey, Ms. Lewis, you, what going on? Sometimes, Ms. Lewis would come talk to me on her own.” Tr. 107.

MSgt Person’s testimony was vague, inconsistent, contradictory and very different than anticipated in the Agency’s Answer, Prehearing Disclosures and Motion to Supplement Witness and Exhibit List.

## **POSITIONS OF THE PARTIES**

### **General Counsel**

The General Counsel argues that the Agency, by MSgt Person’s personal conversations after the filing of the first grievance on May 3, 2016, constituted unlawful bypassing of the Union’s representation of Ms. Lewis regarding the subject matter of both pending grievances. The GC contends such conversations with the complainant of pending grievances, entailing current representation by the Union, violate § 7116(a)(1) of the Statute.

The GC targets the alleged conversation between Ms. Lewis and MSgt Person of June 30, 2016, as a “bypass” of the Union’s representation. However, the evidence garnered significantly more conversations after the filing of the first grievance on May 3, 2016, between Ms. Lewis and MSgt Person. Furthermore, the evidence reveals substantive discussions between these two parties about problems in the Radiology workplace – particularly between supervisor SSgt Davis and subordinate Ms. Lewis – which are the subject matter of the pending two grievances.

The GC notes that the Authority has found that dealing directly with unit employees interferes with the union's rights under § 7114(a)(1) of the Statute "to act for . . . all employees in the unit . . ." (citing *U.S. DOJ, BOP, FCI, Bastrop, Tex.*, 51 FLRA 1339, 1346 (1996) (*Bastrop*)). Therefore, arguing, that an agency unlawfully bypasses a union when it deals directly with a unit employee or employees on a matter involving conditions of employment for which it has an obligation to deal with the union as the exclusive representative, citing *Soc. Sec. Admin.*, 55 FLRA 978, 983-84 (1999) (*SSA*); *AFGE, Nat'l Council of Hous. & Urban Dev. Locals 222*, 54 FLRA 1267, 1276 (1998) (*AFGE HUD Locals*).

An agency bypasses a union when it communicates directly with bargaining unit employees concerning grievances, disciplinary actions, and other matters relating to the collective bargaining relationship where the agency knows the employee is represented by the union, cited by the GC in *Dep't of HHS, Soc. Sec. Admin., Balt., Md.*, 39 FLRA 298, 311 (1991) (*SSA Balt.*); *U.S. DOJ, INS, N.Y. Office of Asylum, Rosedale, N.Y.*, 55 FLRA 1032, 1038 (1999) (*Rosedale*).

In response to the Agency's view of Ms. Lewis as a difficult and troubling employee with a lengthy history of union grievances, disciplinary actions and malfeasances of her duties in the workplace, the GC elicited testimony to refute the same. Mr. Cooper testified Ms. Lewis had a single Equal Employment Opportunity grievance, back in 2010 and otherwise had an "excellent" work record. Tr. 60, 84, 90. On cross-examination, Ms. Lewis testified to being admonished, reprimanded, suspended in 2016, but by her immediate supervisor, SSgt Davis. Tr. 40. Further, the GC presented testimony from Mr. Cooper to fully refute another disagreement with SSgt Davis, including involvement by MSgt Person, regarding Ms. Lewis' alleged failure to report about her appointment with Mr. Cooper, resulting in the single telephone call between Mr. Cooper and MSgt Person. Lastly, there was testimony from Mr. Cooper confirming a lack of any further reported disputes involving Ms. Lewis after SSgt Davis was no longer her supervisor. Tr. 87.

Regarding evidence presented regarding whether or not Major Berrill would serve as Ms. Lewis' "Designated Management Official" (DMO) during the pendency of her grievances, the GC elicited testimony from the witnesses to counter the Agency's argument that MSgt Person would not have communicated with Ms. Lewis about Major Berrill's role as DMO. MSgt Person negated the Agency's argument based upon his personal testimony about personal knowledge of the pending grievances and his numerous conversations with Ms. Lewis during the relevant time period.

In its brief, the GC argued that the Agency failed to offer any viable defenses to the bypass charge. However, the GC cited *U.S. Dep't of VA, VA Med. Ctr., Richmond, Va.*, 68 FLRA 882, 902 (2015), finding that a management official's assurances to an employee that his complaints could be resolved if he would voluntarily change

workstations constituted a bypass. It appears this was offered to counter the Agency's series of cross-examination questions of Ms. Lewis about a litany of subjects MSgt Person did *not* discuss in order to avoid a finding of MSgt Person's conversations, in a management role, to be "a formal discussion" of employment relations during the pendency of a grievance.

Likewise, the GC argued that *DOJ, INS, Border Patrol, El Paso, Tex.*, 36 FLRA 41, 44 (1990), regarding the Authority's finding that an agency is responsible for the conduct of an organizational entity, acting as the agency or "representative of the agency, ' although the organizational entity was not in the same chain of command." This was offered to support their contention that, despite the grievances not being served upon MSgt Person, nor his inclusion in an exchange of emails scheduling Step 1 and Step 2 procedures, his conversations with Ms. Lewis amounted to management discussions with a complainant regarding relevant subject matter of the pending grievances with Ms. Lewis.

### **Agency**

The Agency recognized the identical responsibility argued by the GC regarding an agency's duty not to bypass a lawful union represented employee, citing similar case law. However, they further argued their Agency's right to "latitude to gather information, including opinions, from unit employees to ensure the efficiency and effectiveness of [their] operations . . . ." (citing *Nat'l Treasury Employees Union v. FLRA*, 826 F.2d 114 (D.C. Cir. 1987) (*NTEU*) (quoting *IRS (Dist., Region, Nat'l Office Unites*, 19 FLRA 353, 354 (1985))). Thus, artfully addressing the numerous discussions between MSgt Person and Ms. Lewis during the pendency of her grievances to carve out an exception to the GC's claim of a "bypass."

In pointing out the Agency's "overall management responsibility to conduct operations in an effective and efficient manner, an agency may question employees directly, provided that it does not do so in a way that amounts to attempting to negotiate directly with them concerning matters that are properly bargainable with their exclusive representative, citing *Internal Revenue Serv.*, 64 FLRA 972, 977 (2010); *NTEU*, 826 F.2d at 123, cautioning that the "search for reliable information may not be used as a screen behind which to subvert the union's role as exclusive agent."

In support thereof, the Agency argued the elements of a "formal discussion" with a represented employee during a pending grievance cited in *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 156-58 (1996) (*Warren*). In their post-hearing brief, the Agency addresses the plethora of evidence, both testimonial and documentary, to justify the extent of MSgt Person's communications with Ms. Lewis. The *Warren* decision requires the following elements of a finding to preclude a justifiable defense of communications to carry out an agency's lawful responsibilities: (1) there is a discussion; (2) which is formal; (3) between one or more agency representatives and one or more unit employees or their representatives; (4) concerning any grievance or any personnel policy or practice or other general condition of employment. In particular, the Agency argues that the



“totality of the circumstances” of evidence fails to meet the high burden of a “formal discussion,” thereby justifying MSgt Person’s communications with Ms. Lewis in light of his management responsibilities to oversee the proper functioning of the Radiology Department during the disputes between Ms. Lewis and his manager, SSgt Davis.

The Agency cited *Def. Logistics Agency, Def. Depot Tracy*, 14 FLRA 475 (1984) to support the deficiency of any formal meeting between the two parties. They argue that MSgt Person made “an impromptu visit with Ms. Lewis’ work center to discuss a matter that was personal in nature to Ms. Lewis (her conduct within the workplace, and its impact on the mission) . . . .” (citing *Bureau of Field Operations, Soc. Sec. Admin. S.F., Cal.*, 20 FLRA 80, 83 (1985)). They denote, in the case at bar, there was no advance notice, no formal agenda, no other members of management were present, and the conversation took place in a room adjacent to Ms. Lewis’ work location.

They further argue that neither MSgt Person nor Ms. Lewis testified to MSgt Person’s “attempt to negotiate a resolution of her grievances . . . .,” apparently relying upon their excellent cross examination with a series of questions about changing work stations, supervisors, and the like by asking Ms. Lewis whether or not MSgt Person brought up such potential workplace changes . . . to infer a possible settlement. The Agency cites *U.S. Dep’t of VA, VAMC, Richmond, Va.*, 68 FLRA 882, 68 FLRA 143 (2015), denoting “Management was not merely ‘gathering information’ or ‘opinions’ when the supervisor specifically tried to obtain the employee’s consent to move floors to resolve a complaint.” The Agency attempted to elicit testimony to attack the credibility of Ms. Lewis; no documentary evidence to support her alleged history of troubling behavior in the workplace was introduced into evidence.

### ANALYSIS AND CONCLUSIONS

An agency unlawfully bypasses the exclusive representative by communicating directly with bargaining-unit employees concerning grievances, disciplinary actions, and other matters relating to collective bargaining agreements. *Dep’t of the Treasury, IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 57 FLRA 126, 129 (2001). An agency unlawfully bypasses the exclusive representative when management deals directly with a unit employee or employees on a matter involving conditions of employment for which it has an obligation to deal with the union as the exclusive representative. *SSA*, 55 FLRA at 983-84; *AFGE, HUD Locals*, 54 FLRA at 1276. Dealing directly with unit employees interferes with the union’s rights under Section 7114(a)(1) of the Statute “to act for . . . all employees in the unit.” *Bastrop*, 51 FLRA at 1346. An agency commits bypass when it deals or directly negotiates with unit employees to put pressure on the union to take a certain course of action. *U.S. Customs Serv.*, 19 FLRA 100, 104, 106 n.3 (1983). An agency also bypasses the union when it communicates directly with bargaining unit employees concerning grievances, disciplinary actions, and other matters relating to the collective-bargaining relationship where the agency knows the employee is represented by the union. *Bastrop; SSA, Balt.*, 39 FLRA at 311; *see also Rosedale*, 55 FLRA at 1038.

The evidence of record substantiates an ordinary dispute in a common workplace between a supervisor and an employee, i.e. SSgt Davis and Ms. Lewis. Although there is much evidence in the record to explain and justify the differences of opinion, the undersigned finds the respective justifications for such disagreements to be secondary to the filing of two grievances by Ms. Lewis against the Agency in the Spring of 2016. As in most disputes involving human behavior, particularly in the work place, there is fault upon both sides. Of paramount importance herein, however, is how these disputes were managed.

The claimant, Ms. Lewis, attempted to resolve her differences informally by discussing her concerns with various representatives of management without success, including: Master Sergeant Beverly Gladle (Tr. 16); Master Sergeant Jessie Thomas (Tr. 18); and MSgt Person (Tr. 18, 28). Thereafter, she utilized the services of her exclusive representative of the Union, by Mr. Cooper, commencing within three to five days of May 3, 2016, after the time she personally filed her initial grievance. Tr. 87.

The hearing resulted in the presentation of multiple meetings and communications between the two protagonists of this action, Ms. Lewis and MSgt Person, to the surprise and consternation of the Agency. These communications preceded the filing of the first grievance on May 3, 2016. Tr. 95. There is corroboration between the primary witnesses, Ms. Lewis and MSgt Person, that the communications between Ms. Lewis and MSgt Person intensified shortly before the filing of the first grievance. Tr. 18, 28, 102-03.

Although the evidence was not determinative of a date certain, MSgt Person was clearly aware of the grievances filed by Ms. Lewis. Tr. 102-03. In fact, MSgt Person, although contradicting himself at times, clearly testified to having approached the Human Relations office to learn about the extent to which he was able to legally communicate with Ms. Lewis without violating his statutory responsibility not to bypass Ms. Lewis' exclusive representative, the Union. Tr. 105. I find his intentions to be good, but violative of § 7116(a)(1) and (5) of the Statute by bypassing the Union in dealing directly with the complainant without Union representation present.

The Agency argues that the Human Relations contact with whom MSgt Person testified about consulting, Terry Harrigan (Tr. 162), was not qualified to advise management representatives, including MSgt Person, regarding labor relations, because he was a Human Resource Liaison, not a Labor Relations Specialist. Tr. 152. However, this distinction does not rise to a justifiable defense to bypassing the Union's right to participate in MSgt Person's discussions with Ms. Lewis regarding workplace employment conditions in violation of the Statute. The evidence is uncontradicted that MSgt Person met repeatedly on numerous occasions with Ms. Lewis during the relevant pendency of the grievances. MSgt Person's intent to avoid a violation and the presumption of good intentions of investigating the continuing dysfunctional workplace relations between SSgt Davis and Ms. Lewis on a continuing basis do not justify his unlawful communications with Ms. Lewis.

There was disagreement between these two primary witnesses about the exact subject matter of their discussions after May 3, 2016. However, the GC clearly exceeded its' burden, by a preponderance of the evidence, that the Agency had a legal obligation to deal directly with the Union in discussing with Ms. Lewis her workplace employment conditions during the pendency of multiple grievances filed about "a hostile abrasive work environment" based upon her supervisor's (SSgt Davis) management of the Radiology Department, and over the specific supervision of Ms. Lewis due to continuing disagreements, disputes and objectionable behavior in front of co-workers and patients – particularly to the extent that MSgt Person testified to continuing to speak with Ms. Lewis about "what's going on" on a daily basis." The undersigned respectfully references the Findings of Facts regarding the testimony of MSgt Person and Ms. Lewis above.

Despite the lack of clarity about exactly what was discussed, the fact that MSgt Person chose to repeatedly speak with Ms. Lewis, represented by the Union, during the pendency of her grievances after May 3, 2016 – in private, where no other witness, on behalf of management or the Union, or other objective co-workers, could verify the exact nature of the conversations disfavors the Agency position.

Although not concluded in the undersigned's Findings of Facts above, due to the mere preponderance of evidence, there is evidence of Major Berrill having overheard or observed disagreements between SSgt Davis and Ms. Lewis. It would not be surprising for a superior officer to suggest the Radiology Department's Flight Chief of Diagnostic Imaging to investigate why there were continuing disputes affecting the operation of that department. Such a suggestion by a superior officer might explain the difference in testimony, between Ms. Lewis and MSgt Person, as to whether or not MSgt Person initiated the June 30, 2017, meeting between the two at the behest of Major Berrill.

Although I find the evidence lacking to make such a finding, I would further proffer that such a conclusion is likely as well as consistent with MSgt Person's testimony quoted in the next to the last Finding of Fact recited above. Such well-intentioned desire to avoid a lack of patient care or to comply with a superior officer's expression of interest in looking into personnel problems in a toxic workplace environment does not meet the legal criteria, cited by the Agency above, to avoid a "formal meeting" regarding other management topics or objectives that are not directly relevant and pertinent to the subject matter of a "hostile work environment."

Clearly, the general subject matter to which both MSgt Person and Ms. Lewis testified, about their private conversations during the pendency of the grievances, was directly about the continuing nature of the disputes between Ms. Lewis and SSgt Davis. Hence, the Agency's defense, of a lack of MSgt Person calling a "formal meeting" with Ms. Lewis is defeated due to MSgt Person's admissions against the Agency's own interests of his continuing conversations with Ms. Lewis about the ongoing workplace environment problems in the Radiology Department based upon the specific disagreements between SSgt Davis' continuing complaints to MSgt Person about Ms. Lewis' job performance.

The undersigned finds MSgt Person's continuing investigations and communications, as a manager over SSgt Davis and Ms. Lewis, would be reasonable during a deployment or even in a non-battle field setting absent a Master Labor Agreement. However, once the grievances were filed, pursuant to the parties Master Labor Agreement, his conduct was a direct violation of bypassing Ms. Lewis' exclusive representative, the Union, by choosing to repeatedly meet with her in private to learn about "what's going on" as well as how to reduce work environment tensions and improve patient care. His duty was to follow the procedures outlined in the Statute for which the Agency lacks any excuse for not complying to the contrary – despite the best intentions of any one in management.

Based upon the forgoing analysis of the evidence, the undersigned respectfully concludes that the Agency, by MSgt Person, violated § 7116(a)(1) and (5) of the Statute by bypassing the Union in dealing directly with the complainant without Union representation present and refusing to negotiate in good faith with the Union.

### **REMEDY**

With respect to the remedy, the General Counsel asks that the Authority issue an order directing the Agency to cease and desist from failing or refusing to bargain in good faith with the Union by bypassing the Union and communicating directly with the bargaining unit employees concerning grievances.

The General Counsel also requests an Order to the Agency to post a notice, signed by the Agency's Commander, on all bulletin boards where notices to employees are customarily posted, as well as to Order the Agency to email the notice to all bargaining unit employees of the notice pursuant to *U.S. DOJ, BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 226 (2014) (electronic notice-posting is a traditional remedy); and, *Warren*, 52 FLRA at 161 (Authority prescribes a notice in virtually all cases where a violation is found).

### **CONCLUSION**

Based upon the foregoing, the undersigned respectfully concludes that the Respondent violated § 7116(a)(1) and (5) of the Statute by bypassing the Union in dealing directly with the complainant without Union representation present and refusing to negotiate in good faith with the Union.

### **ORDER**

Pursuant to § 2423.41 of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Department of the Air Force, 96th Test Wing, Eglin Air Force Base, Florida, shall:



1. Cease and desist from:
  - (a) Failing or refusing to bargain in good faith with the American Federation of Government Employees, Local 1897, AFL-CIO (Union), the designated representative of bargaining unit employees, by bypassing the Union and communicating directly with the bargaining unit employees concerning grievances;
  - (b) In any like or related manner, interfering with, restraining or coercing bargaining unit employees in the exercise of their rights assured by the Statute;
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
  - (a) Post at its facilities where bargaining unit employees represented by the Union 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 Commander, 96th Test Wing, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.
  - (b) On the same date the Notice is physically posted, it must be disseminated to all bargaining unit employees by email or other electronic media customarily used to communicate with bargaining unit employees.
  - (c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, December 15, 2017, Washington, D.C.



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DAVID L. WELCH  
Chief Administrative Law Judge



