UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS CHARLESTON, SOUTH CAROLINA Respondent	
and ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO Charging Party	Case No. AT-CA-03-0193

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

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

Any such exceptions must be filed on or before **NOVEMBER 21, 2005**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20005

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RICHARD A. PEARSON
Administrative Law Judge

Dated: October 21, 2005
Washington, DC

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

MEMORANDUM DATE: October 21, 2005

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
CHARLESTON, SOUTH CAROLINA

Respondent

and Case No. AT-CA-03-0193

ASSOCIATION OF ADMINISTRATIVE LAW
JUDGES INTERNATIONAL FEDERATION
OF PROFESSIONAL AND TECHNICAL
ENGINEERS, AFL-CIO

Charging Party

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

Enclosures

OALJ 06-01

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
Washington, D.C.

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS CHARLESTON, SOUTH CAROLINA Respondent	
and ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO Charging Party	Case No. AT-CA-03-0193

Paige A. Sanderson, Esquire
For the General Counsel

Cathy Six, Esquire
For the Respondent

Jean E. Van Slate, Esquire
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. pt. 2423 (2005).

The Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (the Charging Party or Union) initiated this case on December 2, 2002, when it filed an unfair labor practice charge against the Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina (the Respondent or Agency). After investigating the charge, the General Counsel of the Federal Labor Relations Authority

(General Counsel) issued a complaint on August 26, 2003, against the Respondent. The complaint alleges that the Respondent violated section 7116(a)(1) and (2) of the Statute by terminating Beaufort, South Carolina, as a remote hearing site because the Union filed a grievance. The Respondent filed an answer to the complaint, admitting the factual allegations but denying that it terminated Beaufort as a remote hearing site because the Union filed a grievance or that it committed an unfair labor practice.

A hearing was held in Charleston, South Carolina, at which all parties were represented and afforded the opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. The General Counsel and the Respondent subsequently 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 Union, a labor organization within the meaning of 5 U.S.C. § 7103(a)(4), is the exclusive collective bargaining representative of a nationwide bargaining unit consisting of Administrative Law Judges (ALJs) employed by the Respondent. The Office of Hearings and Appeals (OHA) is responsible for adjudicating appeals relating to disability claims filed with the Social Security Administration (SSA).

The events that underlie the complaint in this case concern the Charleston Hearing Office of OHA, which has responsibility for cases arising in a geographic jurisdiction covering portions of North and South Carolina. The Charleston Hearing Office is headed by a Hearing Office Chief Administrative Law Judge (HOCALJ). Ronald C. Dickinson has been serving in this capacity since May of 2002. The Charleston Hearing Office is also a component of Region IV of OHA, which is headed by a Regional Chief Administrative Law Judge (RCALJ).[1]

The disability hearings are conducted by ALJs, either at the hearing office itself or at various "remote" sites within the geographic area serviced by the hearing office. Remote sites are established to accommodate disability

[1] At the time of the events of this case, Henry Watkins was the RCALJ and Ollie L. Garmon III was Assistant to the RCALJ. Subsequently, Garmon was named Acting RCALJ in June of 2003 and RCALJ on October 1, 2003.

claimants, who would otherwise have to travel considerable distances to reach the hearing office. The RCALJ, in consultation with the HOCALJ, determines when and where to establish remote hearing sites. Resp. Ex. 3. A "permanent" remote site is one where space is leased by either SSA or General Services Administration (GSA) acting on SSA's behalf; a "temporary" remote site is one where no lease is involved and hearings are held in facilities such as hotels. Tr. 22-23, 122-23.

Until the late 1990's, when the building was damaged by a hurricane, the Charleston Hearing Office was located in the federal building in downtown Charleston. As a result of the hurricane, Respondent's offices were moved to another downtown location, but that building did not have space for hearing rooms. Therefore, for several years until January 2003 (including the time when the events of this case were unfolding), the Agency used three temporary locations (primarily in motels) in Charleston for its hearings. It also maintained two permanent remote sites (in Myrtle Beach, South Carolina, and Wilmington, North Carolina) and a temporary remote site in Beaufort, South Carolina. The Respondent began using the Beaufort remote site, located in the county courthouse there, in late 1996 or early 1997, and it is this facility that is the focus of the dispute that gave rise to the complaint in this case.[2] The Beaufort space was initially provided to OHA free of charge, but sometime in 2001 the court began charging $110 each time OHA used the space for hearings.

In approximately October of 2002,[3] a few months after he became the Charleston HOCALJ, Dickinson was advised by one of the group supervisors in the office that one particular ALJ had a practice of leaving the Charleston office at approximately 11:00 a.m., driving to Beaufort (which is about 70 miles south of Charleston), spending the

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[2] The exact cause and date of OHA beginning to hold hearings in Beaufort were disputed by witnesses, but I do not consider these questions material to the issues before me.

[3] Hereafter, all dates are 2002 unless otherwise noted.

night, and not holding hearings until the next day.[4] Dickinson considered this unacceptable and in violation of OHA's travel policy (Resp. Ex. 1 and 2), so he first spoke to the specific ALJ individually about it, and then he spoke separately to Jean Van Slate (an ALJ in the office and the Union's local representative) about the general subject of travel time to remote hearing sites. Tr. 170-72, 176. During the course of their discussion (which Van Slate testified occurred on October 10), Van Slate informed Dickinson that the Union had reached an agreement with the preceding HOCALJ that set "standard" amounts of time for ALJs to travel between Charleston and the various remote sites. Under that agreement, the amount of time allotted for travel between Beaufort and Charleston was 3½ hours each way (including lunch). Van Slate gave Dickinson a copy of that document (G.C. Ex. 3), which was actually an e-mail sent by then-Acting HOCALJ R. Alexander Hild to an employee in the OHA regional office, dated December 7, 2001.

Dickinson followed up on their initial conversation by telling Van Slate on October 15 that he disagreed with the amount of time allotted in the Hild memo for travel between Charleston and Beaufort. They debated how long it actually took to drive from one office to the other, but Dickinson told Van Slate that he was going to insist that ALJs follow the national ALJ travel guidelines. He told Van Slate that he was going to check with headquarters about this and get back to him. Tr. 30-31, 176-80. Later that day, Dickinson reported back to Van Slate that Jim Landrum, an official at OHA headquarters, had advised him that he (Dickinson) had no authority to negotiate anything locally that varied from the terms of the so-called "Anglada Memo" (Resp. Ex. 2), which set forth agency travel policies. Dickinson told Van Slate that he was going to issue to the judges his own policy regarding travel. Van Slate testified that during these conversations, Dickinson expressed concern that if established policy wasn't followed, the Charleston office

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[4] Each of the Respondent's eight ALJs (including the HOCALJ) works primarily out of the Charleston office and is assigned cases throughout the office's geographic service area. Each ALJ is responsible for scheduling his or her own hearings in Charleston and the remote sites when he or she has a sufficient number of cases there, but the HOCALJ must approve all proposed travel dockets and travel expense vouchers.

could lose the Beaufort cases to the Savannah office (Tr. 31).[5]

By memorandum dated October 16 (G.C. Ex. 4), Dickinson informed Van Slate that they could not negotiate the issue of travel locally, because it was covered by Article 19 of the national collective bargaining agreement between OHA and the Union, which in turn referenced the Anglada Memo regarding ALJ travel. Dickinson also informed Van Slate that travel to the hearing site in Beaufort should not exceed three hours round trip and that he would not approve travel or lodging for ALJs on the day before hearings. Dickinson also identified the minimum number of hearings that he expected the judges to conduct on the day of travel and any subsequent days on the same trip if lodging costs were incurred. Dickinson sent copies of his memo to the other ALJs in the Charleston office.

In response to Dickinson's memorandum, Hild, who was now working as an ALJ in the Charleston office, sent an undated e-mail to Dickinson, raising a number of concerns about the new travel policy. G.C. Ex. 16. Specifically, Hild argued that not allowing the judges to travel to Beaufort the day before the hearings would prove more costly and have a negative effect on productivity and efficiency. Additionally, citing his experience with adverse road and weather conditions, he disputed Dickinson's estimate that it took only 1½ hours to travel between Charleston and Beaufort. Lastly, Hild suggested that there were more pressing problems in the office that should be the focus of Dickinson's attention.

On October 21, Van Slate filed a grievance on behalf of the Union, challenging Dickinson's policy, demanding

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[5] The testimony of both Van Slate and Dickinson was very similar concerning the substance of their conversations on October 15. Dickinson, however, neither confirmed nor denied Van Slate's claim that Dickinson expressed concern about losing the Beaufort cases to the Savannah office. Given that Beaufort is closer to Savannah than to Charleston, it is plausible that Dickinson might have been concerned that OHA might shift the geographic service areas of the Charleston and Savannah hearing offices and that this would tie into his concern about the reasonableness of travel practices by some of the ALJs servicing the Beaufort area. In view of this and the absence of any testimony to the contrary by Dickinson, I credit Van Slate's testimony and find that Dickinson did express concern about losing the Beaufort cases to Savannah.

bargaining, and requesting that in the interim the status quo be maintained. G.C. Ex. 5.

On October 25, Dickinson mentioned to Van Slate that he wanted to meet with the ALJs. Van Slate testified that during this conversation, Dickinson stated that he was standing by his travel policy and that he expected the judges to go along with it. Tr. 36-37. According to Van Slate, Dickinson also said that if the judges didn't go along with the policy and if case filings dropped when they moved into their new Charleston office space, he would direct that all Beaufort cases be heard in Charleston. *Id*.

According to Van Slate's testimony, Dickinson met with the judges on October 29 and repeated his statement that if they didn't go along with his policy, all Beaufort cases would be heard in Charleston. Tr. 37-38. Dickinson testified that when he met with the judges, he reiterated his travel policy and told them that while they might not be happy with it, it was the policy nonetheless. Tr. 188-89. Dickinson specifically denied saying that if the judges resisted his policy, he would discontinue using Beaufort as a remote site. *Id.*

The only other witness who testified about the October 29 meeting was Hild.[6] Hild stated that the subject of travel to Beaufort came up at the meeting, but he was not asked to provide much detail as to the substance of Dickinson's remarks. Somewhat equivocally, he recalled that Dickinson "may have" stated that he "might terminate us going to Beaufort", but he could not recall the context of Dickinson's comment or whether Dickinson explained why he might take such action. Tr. 101-02.

Dickinson testified that when he arrived in Charleston as HOCALJ in May 2002, the move of the office out of its temporary quarters into more permanent space was supposed to occur within a short time, but problems with furniture and funding delayed the move. Tr. 183-84. He charac-terized the temporary quarters as "totally unacceptable" and said that he and his management team were "incessantly" discussing how quickly they would be able to move into the new offices. Tr. 184, 201. In this context, when they learned in early November that the new hearing rooms would be available in mid-December, they also questioned the need for the Beaufort remote site. Tr. 201. The availability of the permanent hearing rooms meant that the temporary

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Hild did not believe that Van Slate attended this meeting (Tr. 102), but it is not necessary to resolve this discrepancy between his testimony and Van Slate's.

Charleston-area sites were no longer needed, and at that point Dickinson also sought the Region's approval to discontinue use of the Beaufort facilities. Tr. 186-87, 201-02. He testified that he talked to Garmon, the Assistant RCALJ, about terminating the Beaufort site and gave him five reasons to justify doing so: the decline in case receipts from the Beaufort area; the increase in the number of Charleston ALJs in recent years; the rental charge imposed on what originally was free space in the Beaufort courthouse; the expense, inconvenience and loss of productive time caused by judges' travel; and the move to new Charleston office space that contained three hearing rooms. Tr. 182-83, 186-87.

Dickinson further testified that when he was considering whether to continue the Beaufort remote site, he relied on data provided to him by his staff. Tr. 185. He stated that in his mind, the decline in case load was one of the least significant reasons for terminating Beaufort, but that he "threw it in" as a reason to Garmon because the information was supplied to him. Tr. 202-03. Dickinson asserted that his main concerns underlying his determination were the cost factors (i.e., the fee for the hearing room and the costs associated with travel for the judges, clerks and expert witnesses) and the soon-to-be-available "free" space in Charleston. Tr. 188, 203. Although he acknowledged that the Agency would have to reimburse some claimants for their travel, Dickinson contended that holding the hearings in Charleston would be more cost effective than sending judges to Beaufort.

Garmon testified that he conveyed Dickinson's recommendation to terminate the Beaufort remote site to then-RCALJ Watkins, who approved it.[7] In light of the imminent availability of the new Charleston hearing rooms and the decline in Beaufort case filings, Garmon felt that it made economic and administrative sense to hold the hearings in Charleston. Tr. 134-35. Garmon also testified that nothing in his conversations with Dickinson suggested that the grievance filed by the Union was a basis for Dickinson's recommendation, and that he (Garmon) did not even mention to Watkins that a grievance had been filed. Tr. 136.

On November 15, Dickinson responded to the Union's grievance. G.C. Ex. 6. After giving his reasons for his October 16 policy and denying the grievance, Dickinson also informed Van Slate that management was discontinuing the use

[7] Garmon's recollection was that this occurred in late October or early November.

of Beaufort as a remote hearing site. In this regard, Dickinson stated that unassigned Charleston cases would no longer be designated for hearing in Beaufort; however, cases already assigned could be heard in either Beaufort or Charleston, at the option of the judge. As reasons for the discontinuation of Beaufort as a remote site, Dickinson cited the same five factors that he had given to Garmon. He also offered to negotiate with the Union concerning the impact and implementation of this decision. *Id.*

Starting in January 2003, ALJs began conducting hearings in the "permanent" hearing rooms in their new Charleston office facility. The Charleston office staff moved into the facility in May 2003. Tr. 184-85.

DISCUSSION AND CONCLUSIONS

Issues and Positions of the Parties

The issue presented by the complaint in this case is whether the Respondent violated section 7116(a)(1) and (2) by discriminating against employees in connection with conditions of employment. More specifically, the question is whether the Respondent terminated the use of Beaufort as a remote hearing site because of protected activity on the part of bargaining unit employees.

The analytical framework that the Authority applies in determining whether there is a violation of section 7116(a)(2) was set forth in *Letterkenny Army Depot*, 35 FLRA 113 (1990) (*Letterkenny*). Under the *Letterkenny* analysis, the General Counsel initially has the burden of establishing a *prima facie* case of discrimination by establishing that: (1) the employee against whom the alleged discriminatory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the agency's treatment of the employee. *See, e.g., Department of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 55 FLRA 1201 (2000) (*Warner Robins*). Once the General Counsel makes the required *prima facie* showing, an agency may seek to establish as an affirmative defense that: (1) there was a legitimate justification for the action; and (2) the same action would have been taken even in the absence of the protected activity. The General Counsel may then seek to establish that the agency's reasons for taking the action were pretextual. Under the *Letterkenny* analysis, the General Counsel bears the burden of establishing by a preponderance of the evidence that an unfair labor practice was committed. *See Letterkenny*, 35 FLRA at 122.

Both the General Counsel and the Respondent rely on the *Letterkenny* analysis in arguing this case. The Respondent argues that the General Counsel has not met its burden of proof and failed to establish a *prima facie* case that the termination of the Beaufort remote site was in retaliation for the Union's grievance. In this regard, the Agency asserts that other than timing, the General Counsel has presented no evidence to show a causal relationship between the grievance and the termination of the site. According to the Agency, there is no credible evidence to support the General Counsel's claim that Dickinson said he would terminate using Beaufort as a hearing site if the judges didn't go along with his policy on travel to Beaufort. The Respondent contends that the decision to terminate the Beaufort site was motivated by factors other than the grievance: specifically, the reasons listed by Dickinson in the November 15 grievance decision, and most importantly, the availability of hearing rooms in the new Charleston facility. It similarly contends that the timing of the decision was driven by Dickinson's discovery in early November that the permanent Charleston hearing rooms would be ready in December. Additionally, the Respondent maintains that the decision was made at the regional level rather than by Dickinson and that the regional officials relied on considerations other than the grievance.

The Agency further argues that even assuming the General Counsel met the burden of proof necessary to establish a *prima facie* case, the evidence demonstrated that it had a legitimate justification for terminating Beaufort as a hearing site and would have taken the same action regardless of the protected activity.

The General Counsel argues that it has met its burden for establishing a *prima facie* case that discrimination occurred when the Agency terminated Beaufort as a remote hearing site. Specifically, the General Counsel avers that Van Slate was expressly acting on behalf of the Union when he filed the grievance, and that Dickinson and Garmon were aware of the protected activity. The General Counsel asserts that the timing of Respondent's action relative to the grievance, Dickinson's comments to the ALJs about the potential negative consequences of their resisting his travel policy, and the fact that Dickinson subsequently abandoned or minimized the relevance of some of his original reasons for his decision show that his asserted reasons were pretextual.

With respect to the cost of holding hearings in Beaufort, the General Counsel characterizes Dickinson's concern as disingenuous in view of the fact that he had

known of the cost attached to using the Beaufort courthouse for a considerable length of time before he took action to terminate it as a remote site. The General Counsel also faults Dickinson and Garmon for failing to seek out alternative, rent-free locations for hearings in Beaufort. As to the alleged drop in case filings, the General Counsel maintains that Dickinson failed to show that he obtained any data to substantiate his claim that case filings had dropped. The General Counsel challenges Dickinson's reliance on the increased number of judges as a reason to discontinue Beaufort, contending that the larger number of judges would seem to result in a need for more hearing rooms rather than fewer. The General Counsel rejects as unsupported Dickinson's claim that travel to Beaufort was an inefficient and wasteful use of the judges' time. Regarding the relationship between the availability of the hearing rooms in the new space and the termination of Beaufort, the General Counsel characterizes it as a coincidental one that afforded Dickinson cover for his true motive. The General Counsel further notes that the three permanent hearings rooms that became available in Charleston are insufficient to compensate for the four temporary hearing sites (three Charleston-area motels and the site in Beaufort) that were terminated.

As a remedy, the General Counsel seeks an order requiring the Respondent to reinstate Beaufort as a remote hearing site and post a notice to employees.

Analysis

Unlike many cases alleging discrimination under section 7116(a)(2), the circumstances here do not involve an action allegedly taken against individual(s) based on their individual protected activity. Rather, this case involves a change in a working condition of a group of employees, that was allegedly made in retaliation for a grievance filed by a union representative. Nevertheless, the *Letterkenny* analysis is still applicable for determining whether the Agency violated section 7116(a)(2) here. *See U.S. Department of Labor, Washington, D.C., and U.S. Department of Labor, Employment Standards Administration, Boston, Massachusetts*, 37 FLRA 25 (1990) (Authority applied *Letterkenny* analysis to determine whether agency violated section 7116(a)(2) when it ceased providing water coolers, allegedly in retaliation for a grievance filed by the union over its refusal to provide a water cooler at one work location).

Applying the *Letterkenny* analysis, it is clear that bargaining unit employees were engaged here in protected

activity, by virtue of the Union's October 16 grievance and Hild's undated e-mail. Dickinson received both documents and therefore was directly aware of the protected activity.[8]

Next, the General Counsel must show by a preponderance of the evidence that this protected activity was a motivating factor in the action claimed to be discriminatory. *See, e.g., United States Department of Veterans Affairs Medical Center, Leavenworth, Kansas*, 60 FLRA 315, 318-19 (2004) (*VA Leavenworth*). The determination of whether the General Counsel has met its burden and established a *prima facie* case as required in the initial step of the *Letterkenny* analysis is based on the record as a whole. *See, e.g., Warner Robins*, 55 FLRA at 1205. If the evidence in the record as a whole, including rebuttal evidence submitted by the respondent, is insufficient to demonstrate a *prima facie* case, the complaint fails.

Here, the record does not establish union animus on Dickinson's part. I did not detect any indication of union animus in Dickinson's testimony or demeanor. The primary evidence of such animus is Van Slate's account of Dickinson's comments to him and to the other judges: it can be inferred from his account that Dickinson effectively threatened to terminate Beaufort as a remote hearing site if the judges resisted his travel policy.[9] However, I do not believe that such an inference is justified, and for the following reasons I do not credit Van Slate's account.

Van Slate testified that Dickinson made these comments both in a conversation with him on October 25 and at a meeting with the judges on October 29. Tr. 36-38. Dickinson denied making the alleged comment. Tr. 188-89. Hild could only say that Dickinson "may have" mentioned terminating travel to Beaufort, but he did not recall Dickinson giving any reasons for such an action or linking the potential termination of Beaufort travel to any behavior of the judges. Tr. 102. If such a comment had been made at the meeting, it is the sort of remark that attendees

[8] The fact that RCALJ Watkins may have technically been the official responsible for making the final decision to terminate the Beaufort site, and that Watkins was unaware of a grievance being filed, does not alter the analysis. Dickinson was the person who made the primary determination that the site should be terminated, and it is his motivation that is essential under 7116(a)(2).

[9] The General Counsel did not allege that this statement constituted an independent violation of section 7116(a)(1) of the Statute, but it is relevant to the Respondent's motivation pursuant to section 7116(a)(2).

(particularly Hild, who had recently served as HOCALJ, had authored the travel policy that Dickinson was reversing, and had just written his own protest letter concerning Dickinson's policy) would be likely to remember.

Additionally, the description of events that Van Slate provided in the unfair labor practice charge underlying the complaint in this case (G.C. Ex. 1(a)) does not include any reference to terminating the Beaufort site if the judges resisted his policy; rather, according to the allegations made by Van Slate in the charge, Dickinson indicated on October 25 that he feared the office might lose Beaufort to the Savannah office. *Id.* In this latter context, Dickinson is expressing concern about the overall costs of judges traveling to Beaufort, rather than a concern about judges resisting his policies. Such a neutral inference is also consistent with the description of the October 29 meeting given by Hild. It is also clear to me from Dickinson's testimony (see, e.g., Tr. 189) that he did not view the judges as having a choice of not "going along" or cooperating with his travel policy, since he, as the HOCALJ, must approve all travel expenses. Thus he had no motivation to threaten the judges if they dragged their feet. I find that, taken as a whole, the evidence does not support Van Slate's claim that Dickinson effectively threatened to discontinue travel to Beaufort if the judges resisted his policy. While Dickinson may well have advised Van Slate or the other judges that he was worried about losing jurisdiction of the Beaufort cases to the Savannah office or that he might direct that all Beaufort cases be heard in Charleston, I do not believe he made such comments in a manner or context that could reasonably be interpreted as coercive. *See, Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah*, 35 FLRA 891, 895-96 (1990).

The only other evidence in the record that suggests a retaliatory motive on Dickinson's part was the timing of his decision to terminate Beaufort as a remote hearing site and the vehicle that he used to announce the decision to the Union (i.e., the memo denying the Union's grievance regarding travel expenses also announced the end of travel to Beaufort). Although timing may be a significant factor in determining motivation and whether a *prima facie* case of discrimination has been established, it is not conclusive proof of a violation of section 7116(a)(2). *See, e.g, VA, Leavenworth*, 60 FLRA at 319.

What emerges from the record in this case is that Dickinson became concerned about what he saw as inefficient and unwarranted travel practices associated with the use of Beaufort as a remote hearing site. Initially, Dickinson

attempted to remedy the problem by imposing limitations on the amount of time that would be allocated for travel involving Beaufort and establishing standards for the amount of work required to justify lodging expenses for such trips. Dickinson's efforts provoked a grievance from the Union as well as an objection from Hild. While this controversy was ongoing, Dickinson learned that three hearing rooms, located in new space that was being prepared for the Charleston Hearing Office, would soon be available for use. This offered an alternative to using Beaufort as well as the temporary hearing sites in the immediate Charleston area. In addition to saving the costs in time and money associated with judges traveling to Beaufort, the prospect of using the new hearing rooms offered the additional advantage of eliminating the rental fees associated with the space in Beaufort and the motel sites around Charleston.

I find Dickinson's explanation convincing that the determinative factors in his decision to terminate Beaufort as a remote hearing site were the costs (in both time and money) of having a remote hearing site in Beaufort and his recognition that three permanent hearing rooms would soon be available in Charleston. I do not find the fact that Dickinson de-emphasized in his testimony some of the reasons he previously gave to the Union and to the OHA regional office discredits his explanation of why he chose to abandon the Beaufort site. It is not unusual for a manager, or anyone else for that matter, to "pack" a recommendation with as many arguments as possible, including some that he considers to be of lesser weight. In this regard, Dickinson had been advised by an assistant that the caseload from the Beaufort area had been declining; although he did not independently verify that assertion, he had no reason to doubt its accuracy. While he might not have found that fact to be determinative in his decision, it might have been useful in helping to convince the RCALJ to accept his recommendation (especially since OHA's internal guidelines list "case receipts" as one factor in such decisions) (Resp. Ex. 3, section B).

As a matter of timing, it is undeniable that the Agency announced (on November 15) that the Beaufort site was being terminated shortly after the Union had filed (on October 21) its grievance protesting Dickinson's policy on travel to Beaufort. Additionally, Dickinson's use of the grievance response as the vehicle to announce the termination of the Beaufort site to the Union certainly invited questions about the purity of his motives. The question for me is whether the grievance was a motivating factor in the choice Dickinson made. Although such determinations can never be made with absolute certainty, the record as a whole does not

support a conclusion that Dickinson was influenced by the filing of the grievance. I find that it is more likely that Dickinson was motivated strictly by the desire to eliminate what he had come to view as an inefficient and costly arrangement, and the availability of the new hearing rooms presented the best opportunity to accomplish that.

On Dickinson's behalf, it must be acknowledged that once the grievance was filed, for a good period of time thereafter, any move to eliminate Beaufort would have been subject to suspicion. Thus, whether the announcement was made in the grievance response or in a separate document issued around the same time amounts to a difference without much of a distinction. In any event, I find that in the context of the three hearing rooms emerging as a viable alternative to Beaufort around the same time that Dickinson was preparing his the response to the Union, the announcement of the decision in the grievance response becomes less suspicious and more likely a product of coincidence.

An unspoken, but not trivial, assumption in the General Counsel's case is that the termination of the Beaufort remote site was somehow a punitive action against the grieving judges. I cannot accept this assumption on faith alone, however. The ALJs all lived in the Charleston metropolitan area and were traveling periodically to Wilmington and Myrtle Beach in addition to Beaufort. Such travel requires the judges to pack up large numbers of case files and drive several hours, to conduct several hearings, usually in a one- or two-day period of time. While such travel may be attractive to some people, it is equally or perhaps more likely to be unattractive to others, and there is no evidence in the record here to demonstrate that these employees (or Dickinson) particularly considered the elimination of travel to Beaufort as a form of "punishment."

For all of these reasons, I conclude that the General Counsel has failed to establish by a preponderance of the evidence that the Union's grievance was a motivating factor in Dickinson's decision to terminate Beaufort as a remote hearing site. It follows that the General Counsel has failed to make the *prima facie* showing required by the

Letterkenny analysis.[10] Accordingly, the Respondent has not been shown to have committed an unfair labor practice as alleged. I therefore recommend that the Authority issue the following Order:

ORDER

IT IS ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, October 21, 2005

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RICHARD A. PEARSON
Administrative Law Judge

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10 In view of this finding, it is not necessary to address the remainder of the *Letterkenny* analysis. However, in case the Authority were to disagree with my conclusion concerning a *prima facie* case, I would find that the costs and inefficiencies of travel to Beaufort, along with the imminent availability of permanent hearing rooms in Charleston, were legitimate justifications for the Respondent's decision to terminate Beaufort, and that Respondent would have made this same decision in the absence of any protected activity. My reasons for this conclusion are the same as those I discussed above.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-03-0193, were sent to the following parties:

_____

CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

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