

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

DEPARTMENT OF JUSTICE U.S. IMMIGRATION AND NATURALIZATION SERVICE, U.S. BORDER PATROL EL PASO, TEXAS  Respondent  and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1929  Charging Party	Case Nos. DA-CA-01-0144 DA-CA-01-0160

NOTICE OF TRANSMITTAL OF DECISION

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

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

Any such exceptions must be filed on or before **AUGUST 20, 2001**, and addressed to:

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

GARVIN LEE OLIVER  
Administrative Law Judge

Dated: July 17, 2001  
Washington, DC

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

MEMORANDUM  
2001

DATE: July 17,

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER  
Administrative Law Judge

SUBJECT: DEPARTMENT OF JUSTICE  
U.S. IMMIGRATION AND NATURALIZATION SERVICE  
U.S. BORDER PATROL  
EL PASO, TEXAS

Respondent

and  
CA-01-0144

Case Nos. DA-

CA-01-0160

DA-

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
LOCAL 1929

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 any pleadings filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges      OALJ 01-48  
WASHINGTON, D.C.

DEPARTMENT OF JUSTICE U.S. IMMIGRATION AND NATURALIZATION SERVICE, U.S. BORDER PATROL EL PASO, TEXAS <p style="text-align: center;">Respondent</p> and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1929 <p style="text-align: center;">Charging Party</p>	Case Nos. DA-CA-01-0144 DA-CA-01-0160

Philip T. Roberts  
For the General Counsel

Before: GARVIN LEE OLIVER  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On March 29, 2001, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing which was duly served by certified mail on a designated representative of the Respondent. The Complaint alleged that the Respondent violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (8), by failing to furnish to the American Federation of Government Employees, Local 1929, with information requested under section 7114(b)(4) of the Statute. A hearing was scheduled for July 31, 2001.

The Complaint specifically advised the Respondent that an answer must be filed with this Office by April 23, 2001 and that "a failure to file an answer or respond to any allegation in this complaint shall constitute an admission. See 5 C.F.R. § 2423.60(b)." The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter. Accordingly, the Respondent has admitted all allegations of the complaint.

*Department of Veterans Affairs Medical Center, Asheville, North Carolina, 51 FLRA 1572, 1594 (1996).*

On June 27, 2001 Counsel for the General Counsel filed a Motion for Summary Judgment and requested an appropriate remedy requiring the Respondent to promptly furnish the requested information and post a Notice to All Employees. Respondent failed to file a response to the motion for summary judgement within the time period provided for in the Regulations, 5 C.F.R. § 2423.27(b) and 2429.22, or at any time to date.

Based on the allegations of the Complaint, the admissions by operation of section 2423.20(b) of the Authority's Rules and Regulations, and all the pleadings, it appears that there are no genuine issues of material fact and that the General Counsel is entitled to Summary Judgment as a matter of law. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

#### **Findings of Fact**

1. This unfair labor practice complaint and notice of hearing is issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.

2. These cases are consolidated under 5 C.F.R. § 2429.2 because it is necessary to effectuate the purposes of 5 U.S.C. §§ 7101-7135 and to avoid unnecessary costs or delay.

3. The Department of Justice, U.S. Immigration and Naturalization Service, (INS), U.S. Border Patrol, El Paso, Texas, (Respondent), is an agency under 5 U.S.C. § 7103(a) (3).

4. The American Federation of Government Employees, AFL-CIO, National Immigration and Naturalization Service Council (AFGE), is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at INS.

5. The American Federation of Government Employees, Local 1929 (Local 1929 or Charging Party), is an agent of AFGE for the purpose of representing employees at the Respondent within the unit described in paragraph 4.

6. The charges in Case Nos. DA-CA-01-0144 and DA-CA-01-0160 were filed by the Charging Party with the Dallas Regional Director on November 3, 2000, and November 8, 2000, respectively.

7. Copies of the charges described in paragraph 6 were served on Respondent.

8. During the time period covered by this complaint, the persons listed below occupied the positions opposite their names:

Michael Moon	Assistant Chief Patrol Agent
Steve Niblet	Assistant Chief Patrol Agent

9. During the time period covered by this complaint, the persons named in paragraph 8 were supervisors and/or management officials under 5 U.S.C. §§ 7103(a)(10) and (11) at Respondent.

10. During the time period covered by this complaint, the persons named in paragraph 8 were acting on behalf of Respondent.

11. Hugo Calvillo is an employee under 5 U.S.C. § 7103 (a)(2) and is in the bargaining unit described in paragraph 4.

12. George Valdez is an employee under 5 U.S.C. § 7103 (a)(2) and is in the bargaining unit described in paragraph 4.

13. On or about September 6, 2000, the Charging Party, through John Derrah, Second Vice President, requested Respondent to furnish the following information:

a. All pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of disciplinary action or law governing the alleged misconduct of Calvillo;

b. Similar case information from within the Central Region from three years prior to the date of Calvillo's instant offenses; and

c. Calvillo's Employee Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the incident and the present date.

14. On or about August 30, 2000, the Charging Party, through Derrah, requested Respondent to furnish similar case

information from within the Central Region from three years prior to the date of Valdez's instant offenses.

15. The information described in paragraphs 13 and 14 is normally maintained by Respondent in the normal course of business.

16. The information described in paragraphs 13 and 14 is reasonably available.

17. The information described in paragraphs 13 and 14 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.

18. The information described in paragraphs 13 and 14 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

19. The information described in paragraphs 13 and 14 is not prohibited from disclosure by law.

20. On or about October 4, 2000, Respondent, through Moon, denied the Charging Party's request for information described in paragraphs 13, and 15 through 19.

21. Since October 4, 2000, Respondent refused to furnish the Charging Party with the information described in paragraphs 13 and 15 through 19.

22. On or about September 1, 2000, Respondent, through Niblet, denied the Charging Party's request for information described in paragraphs 14 through 19.

23. Since September 1, 2000, Respondent refused to furnish the Charging Party with the information described in paragraphs 14 through 19.

24. By the conduct described in paragraphs 20 and 21, Respondent refused to comply with 5 U.S.C. § 7114(b)(4).

25. By the conduct described in paragraphs 22 and 23, Respondent refused to comply with 5 U.S.C. § 7114(b)(4).

26. By the conduct described in paragraphs 20 and 21 and 24, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1), (5).

27. By the conduct described in paragraphs 20, 21, and 24, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8).

28. By the conduct described in paragraphs 22 and 23 and 25, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a) (1), (5).

29. By the conduct described in paragraphs 22 and 23 and 25, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a) (1) and (8).

### **Discussion and Conclusions**

Based on the admitted material facts by operation of section 2423.20(b) of the Authority's Rules and Regulations, it is concluded that the Respondent violated section 7116(a) (1), (5), and (8) of the Statute, as alleged. The proposed remedy would effectuate the purposes and policies of the Statute.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

### **ORDER**

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, shall:

1. Cease and desist from:

(a) Failing to provide the American Federation of Government Employees, Local 1929, with the information requested by the Union on August 30, 2000 and September 6, 2000.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, Local 1929, with the information requested on August 30, 2000 and September 6, 2000 consisting of: (1) all pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of

disciplinary action or law governing the alleged misconduct of the employees involved in this case; (2) similar case information from within the Central Region from three years prior to the date of the employees' alleged offenses; and (3) the employees' Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the alleged misconduct and at present.

(b) Post at the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, where bargaining unit employees represented by the American Federation of Government Employees, Local 1929 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 Chief Patrol Agent, El Paso Sector, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, July 17, 2001.

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GARVIN LEE OLIVER  
Administrative Law Judge



**NOTICE TO ALL EMPLOYEES**  
**POSTED BY ORDER OF THE**  
**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT fail to provide the American Federation of Government Employees, Local 1929, with the information requested for representational purposes on August 30, 2000 and September 6, 2000.

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

WE WILL, furnish the American Federation of Government Employees, Local 1929, with the information it requested on August 30, 2000 and September 6, 2000 consisting of: (1) all pertinent sections and subsections of the Agency's Administrative Manual, the Border Patrol Handbook, the Officer's Handbook M-68, and/or any other policy, government-wide rule or regulation, schedule of disciplinary action or law governing the alleged misconduct of the employees involved in this case; (2) similar case information from within the Central Region from three years prior to the date of the employees' alleged offenses; and (3) the employees' Performance File, Official Personnel Folder, position description and classification standards, which were in effect at the time of the alleged misconduct and at present.

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(Respondent/Activity)

Dated: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, IL 60603, and whose telephone number is: (312)353-6306.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case Nos. DA-CA-01-0144 & DA-CA-01-0160, were sent to the following parties:

**CERTIFIED MAIL AND RETURN RECEIPT NOS:**

**CERTIFIED**

Philip Roberts, Esquire  
Federal Labor Relations Authority  
55 West Monroe, Suite 1150  
Chicago, IL 60603

P168-060-317

Patricia Beachum, LRS  
DOJ, INS Central Region  
7701 N. Stemmons Freeway  
Dallas, TX 75247

P168-060-318

John Derrah, 2<sup>nd</sup> Vice President  
AFGE, Local 1929  
P.O. Box 91007  
El Paso, TX 79997

P168-060-319

**REGULAR MAIL:**

Bobby Harnage, President  
AFGE, AFL-CIO  
80 "F" Street, N.W.  
Washington, DC 20001

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: JULY 17, 2001  
WASHINGTON, DC