

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

DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF TEXAS HOUSTON, TEXAS  Respondent  and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3966, AFL-CIO  Charging Party	Case No. DA-CA-01-0442

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. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 3, 2002**, and addressed to:

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

RICHARD A. PEARSON  
Administrative Law Judge

Dated: April 30, 2002  
Washington, DC

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

MEMORANDUM

DATE: April 30, 2002

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON  
Administrative Law Judge

SUBJECT: DEPARTMENT OF JUSTICE  
UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON, TEXAS

Respondent

and

Case No. DA-CA-01-0442

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
LOCAL 3966, 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 is a Motion to Dismiss and other supporting documents filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges                      OALJ 02-35  
WASHINGTON, D.C.

DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF TEXAS HOUSTON, TEXAS <p style="text-align: center;">Respondent</p> and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3966, AFL-CIO <p style="text-align: center;">Charging Party</p>	Case No. DA-CA-01-0442

Melanie Russell, Esquire  
For the Respondent

Jeanell Nero-Walker, Representative  
For the Charging Party

John M. Bates, Esquire  
For the General Counsel, FLRA

Before:     RICHARD A. PEARSON  
              Administration Law Judge

**DECISION ON MOTION TO DISMISS**

On June 28, 2001, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing alleging that the Department of Justice, United States Attorney's Office, Southern District of Texas, Houston, Texas (Respondent), violated section 7116(a) (1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). The Respondent subsequently filed an Answer and an Amended Answer denying that it had violated the Statute.

On January 7, 2002, the President issued Executive Order 13252, which amended Executive Order 12171 and determined that the Statute cannot be applied to the United States Attorney's Offices in the Department of Justice in a manner consistent with national security requirements. The

Executive Order thereby excludes the United States Attorney's Offices from the Statute's coverage.

On January 14, 2002, the Respondent filed a Motion to Dismiss for Lack of Jurisdiction. The General Counsel did not respond to the substance of the Motion to Dismiss but instead requested that the hearing on the Complaint be postponed indefinitely. On January 22, 2002, the hearing was indefinitely postponed.

On April 25, 2002, the Authority issued its decision in another case involving the same parties, citing Executive Order 13252 and dismissing the complaint for lack of jurisdiction. 57 FLRA No. 163 (2002). For the same reasons cited by the Authority in that case, it is clear that the Respondent is not covered by the Statute and therefore, Respondent's Motion to Dismiss is hereby, Granted.

Based on the foregoing, I recommend that the Authority issue the following Order:

**ORDER**

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

Issued, Washington, DC, April 30, 2002.

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RICHARD A. PEARSON  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. DA-CA-01-0442, were sent to the following parties:

**CERTIFIED MAIL**

**CERTIFIED NUMBERS:**

John Bates, Esquire                                7000-1670-0000-1175-2973  
Federal Labor Relations Authority  
525 Griffin Street, Suite 926  
Dallas, TX 75202

Melanie Russell, Esquire                         7000-1670-0000-1175-2980  
U.S. Attorney's Office  
600 "E" Street, N.W., Suite 2200  
Washington, DC 20530

Jeanell Nero-Walker, President  
7000-1670-0000-1175-2997 AFGE, Local 3966  
P.O. Box 61129  
Houston, TX 77208

**REGULAR MAIL:**

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

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED:            APRIL 30, 2002  
                      WASHINGTON, DC