

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

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS Respondent and	Case No. WA-CA-90570
FEDERAL EDUCATION ASSOCIATION Charging Party	

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 30, 2000**, and addressed to:

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

SAMUEL A. CHAITOVITZ
Chief Administrative Law

Judge

Dated: July 31, 2000
Washington, DC

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

MEMORANDUM

DATE: July 31, 2000

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Respondent

and

Case No. WA-CA-90570

FEDERAL EDUCATION ASSOCIATION

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

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 00-47
WASHINGTON, D.C.

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS Respondent	
and FEDERAL EDUCATION ASSOCIATION Charging Party	Case No. WA-CA-90570

James E. Lewis, Esquire
For the Respondent

Michael Bauernfeind, Esquire
For the Charging Party

Thomas F. Bianco, Esquire
For the General Counsel, FLRA

Before: SAMUEL A. CHAITOVITZ
 Chief Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 *et seq.* (the Statute), and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), 5 C.F.R. § 2411 *et seq.*

This proceeding was initiated by an unfair labor practice charge filed by the Federal Education Association (Union/Association/FEA) against the Department of Defense Dependents Schools (DODDS). The Regional Director of the Washington Region of the Authority, on behalf of the General Counsel (GC) of the FLRA, issued a Complaint and Notice of Hearing alleging that DODDS violated section 7116(a)(1), (2) and (4) of the Statute by reassigning Roseann Drydale from Bad Krueznach Elementary School (BKES) to Neubruecke

Elementary School (NES) because she engaged in protected activity on behalf of the Union. DODDS filed an Answer denying that it violated the Statute.

A hearing was held in Wiesbaden, Germany, on February 10, 2000, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, and to introduce evidence and to argue orally. All parties filed post-hearing briefs which have been fully considered.¹

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

Findings of Fact

A. Background

The FEA is the is the collective bargaining representative for a unit of teachers employed by DODDS, including teachers at BKES and NES.

Roseann Drydale has been a teacher with DODDS for 21 years. At the time she was hired she signed a Mobility Agreement. During School Year (SY) 1998/1999, Drydale was a first grade teacher at BKES in the Kaiserslautern School District. Drydale had been a first grade teacher at BKES for nine or so years. For seven of those years, including SY 1998/1999, Drydale served as the Faculty Representative Spokesman (FRS) at BKES. The FRS is the highest FEA representative at the school.

At the end of SY 1998/1999, effective for SY 1999/2000, Drydale was reassigned to teach second grade at NES by Kaiserslautern School District Superintendent Terrence Kacik. NES is also in the Kaiserslautern School District, the largest DODDS school district in Europe. NES is about an hour's commute from BKES.

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As part of its brief the Association included a Motion for Reconsideration requesting that I reconsider my ruling denying the Association's motion that the record be held open so it could produce the transcript in the Ausmus grievance in order to impeach a witness, Superintendent Kacik. For the reasons set forth at the hearing and because the Ausmus arbitration decision was on the pre-hearing disclosure statement of the GC of the FLRA and thus FEA knew in advance of the hearing that the arbitration decision could be an issue, the Motion for Reconsideration is DENIED.

B. Drydale's Union Activity

Drydale was an active FRS. She led teachers and others in informational picketing, or attempts at informational picketing, designed to persuade management not to cut staffing at the elementary and high schools. Her efforts were reported in *Stars and Stripes*, the daily news publication read widely by the military and military dependent community.

The informational picketing in May 1997 concerned, among other matters, a decision by DODDS to eliminate an art instruction position at BKES, and to assign the school's music teacher the additional responsibility of teaching art.

Drydale was quoted in *Stars and Stripes* as stating during the picketing, the effect of the decision was adverse not only to the art teacher, but also to the students at the school because the quality of art instruction would diminish with the replacement of an experienced art teacher with a music teacher who had not taught art for more than a decade.

The music teacher, Kathleen Tevnan, viewed Drydale's quoted statements in *Stars and Strips* as disparaging her professional competence. She sent Drydale a strongly-worded objection to Drydale's statements. Drydale responded in writing that she would not withdraw her statements and that Tevnan had misconstrued the statements.

Drydale also was active in the more traditional Federal sector dispute resolution forums. She filed more than one dozen grievances under the parties' negotiated procedure and several unfair labor practices against DODDS since 1995.

BKES principals and Drydale met monthly during the school year to discuss matters of concern to the staff. Those Joint Cooperation Committee (JCC) meetings were established by the parties at Article 4 of their contract. The agendas for the meeting were established in advance and in writing by Drydale and the principals, each of whom independently raised topics. The results of the agendas also were formalized in writing. Both the agendas and the results routinely were made available to members of the bargaining unit.

Among the more important agreements Drydale and the principals reached annually were those establishing work schedules for teachers at BKES.

Over the years, Tevnan and Renate Boyer, a German history and culture specialist, expressed great dissatisfaction with the negotiated schedules. Those BKES teachers are known as specialists because they teach only one subject, such as art, music, and German history and culture, to different groups of students each teaching period during the school day. The specialists complained to Drydale orally and in writing that she had not represented them properly because they were scheduled to teach longer and more frequent periods than they believed to be appropriate. Drydale replied to their criticisms in writing. The specialists objected to her responses.

At the beginning of the 1997-98 school year, Elaine Grande, then newly appointed to the position of principal at BKES, and Drydale as FRS, agreed to hold informal meetings weekly, in addition to their formal monthly meetings in order to address, in a timely manner, concerns best resolved quickly. At the meeting held on September 9, Drydale stated that she lacked professional respect for two of the specialist teachers named above. She also expressed a concern that the teachers who were members of the School Improvement Leadership Team (SILT) at BKES did not represent the views of a majority of the staff.

Grande sent Drydale a memorandum dated September 12 criticizing those statements, among other things. That was the first written document to arise from the informal meeting arrangement. Viewing the preparation of the memorandum as converting the informal process into a formal one, Drydale made the memorandum and her written response to it available to members of the bargaining unit, as she did the documents arising from the formal monthly JCC meetings.

The Association and DODDS have ongoing disagreement over the best methods for improving schools. In the FEA's view, the School Improvement Plan (SIP) DODDS chose to adopt has not been effective, relies on recommendations of SILT that do not reflect the views of a majority of teachers, and places significant demands on the time teachers need to teach and prepare teaching materials and plans.

The FRS at each school was instructed by the Association to ensure that its position was advocated and protected when SIP was raised at the local or school level. Drydale acted in accordance with that instruction and with faculty member complaints to her about SIP, by presenting those concerns when the subject of SIP was raised at BKES. She never, however, failed to fulfill her responsibilities in developing or administering SIP at the school.

In April 1998, a number of teachers at BKES were upset upon learning that Tevnan had been named teacher of the year² by European Congress of American Parents, Teachers and Students (ECAPTS) because they did not know such an award program existed and they believed that Tevnan did not deserve the award. The teachers asked Drydale, in her capacity as FRS, about the award, and informed her of the reasons they were upset. Drydale, in her role as the FRS, sent an electronic mail message to Donald Armell, the president of ECAPTS, essentially repeating what she had been told by the teachers and asking for information about the nomination and selection process.

Drydale engaged in some activity which she believed to be protected activity, but was not. On two occasions, she was disciplined for improper conduct. The principal at BKES during SY 1996/1997, Katherine Peters, issued Drydale a letter of warning for interfering with the investigation of a matter that did not involve a bargaining unit employee. Grande proposed to suspend Drydale for one day for defiance of authority and arriving late and leaving early at a joint labor-management interest-based bargaining training session. The proposed suspension was mitigated by Kaiserslautern School District Superintendent Kacik, to a letter of reprimand.³

C. Drydale's Performance as a Teacher

Drydale's performance throughout her tenure at BKES was appraised annually as fully successful or better, including her last appraisal on June 1, 1999. The only aspect of her teaching that was called into question was her management of the behavior of her students in the classroom. In this regard, it is important to note that critical element number 3 of the performance elements used to appraise Drydale annually was classroom management.

2

Being awarded teacher of the year earned Tevnan prestige. It also gave her the right to attend Military Command 1999 Education Summit in Heidelberg in June 1999, and to participate fully in the development of recommendations for, among other matters, staffing and curriculum of schools in the DODDS system.

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Drydale filed an unfair labor practice charge asserting that the proposed suspension was in reprisal for engaging in protected activity. The FLRA refused to issue a complaint in the matter. Drydale appealed the Regional Director's decision to not issue a complaint to the GC of the FLRA, and the appeal was denied.

Grande believed that use of Drydale's plan for managing the behavior of her student in the classroom caused unwarranted interruption of her teaching, and she repeatedly urged Drydale during the 1997-98 and 1998-99 school years to alter, or consider altering, her approach to managing their behavior. Drydale declined to do so because she had adopted her approach after years of considering alternatives, and had concluded that her approach best taught students the cardinal virtues of cooperation with and respect for others. Drydale attempted to show Grande the merit of her approach by suggesting that Grande read certain books by recognized experts in the field. Grande responded by suggesting books for Drydale's consideration in order to persuade her to modify her plan. While Grande had the authority to order Drydale to alter her plan, Grande did not give such an order. Indeed, Drydale submitted a behavior management plan to Grande at the beginning of each school year, as required, and Grande never disapproved the plan and rated Drydale as having satisfied critical element 3 on both annual performance appraisals prepared by Grande.

D. Relations with Colleagues, Parents and Others

Performance element number 5 of the elements used to appraise Drydale's performance annually is entitled Professional Responsibilities. It has three components: "Contributes to Total School Program," "Participation in student/community activities," and "Establishes relationships and communications." Grande stated in both of her annual appraisals of Drydale that she had at least met all of the standards for element 5. The annual performance appraisals prepared by Grande and her predecessor, Katherine Peters, did not mention any occasions on which Drydale failed to meet the standards for element 5.

Drydale engaged in numerous activities that enhanced the relations between BKES and the community. She played dominant roll in founding and operating a theater in which teachers, students, and parents performed. Drydale received a special award for those efforts in 1996. She also founded the K1 Club, a monthly meeting at which parents of children in kindergarten and first grade were able to obtain pointers on rearing and schooling their children. Drydale earned the respect and admiration of many teachers at BKES and other schools, a former principal at the school, parents of students at the school, and members of the community because of her activities for the school and community beyond fulfilling her responsibilities in teaching children.

Not all of the teachers at BKES admired and respected Drydale. As set forth above, Boyer and Tevnan strongly

objected to the position Drydale, as FRS, took while negotiating with Grande over teacher work schedules. Those specialists preferred to have fewer and shorter teaching period for themselves, and, correspondingly, longer and more teaching periods for classroom teachers, while Drydale sought the opposite in order to provide more preparation and planning time for classroom teachers during their duty day. The specialists accused Drydale orally and in writing of not representing them and objected to her written responses to their objections. They complained to Grande that they had no voice at the school because Drydale did not speak for them.

Grande was greatly concerned about the specialists' belief that they were isolated from the classroom teachers by Drydale's actions as FRS. She believed that her goal of creating a cohesive, cooperative staff was affected adversely by that situation.

Several parents asked Grande to assign their children to first grade teachers other than Drydale because, they claimed, either they had heard that she was harsh and a strict disciplinarian, or they had seen or heard Drydale speak or treat her students in such a manner. Grande testified that the parents made such statements to her orally and/or in writing.⁴

Only one of those parents testified: Cassandra Cammack. She described how her daughter changed after entering Drydale's class. Cammack attributed those changes to her daughter's reaction to Drydale's treatment.

Drydale had an unusually difficult time with a student (who will be referred to as Jane) at the beginning of the 1997-98 school year.⁵ The child had been diagnosed with attention deficit and hyperactivity disorder, a disease that manifests itself in a lack of attention span, indifference to or difficulty in comprehending instructions, and a proclivity to act on impulse without regard to instruction.

⁴

The record established that it was not unusual for parents to register complaints about teachers. For example, two of Drydale's colleagues, Linda Batten and Mary Beth Hughes, each had four such complaints registered against them during the 1998-1999 school year. First grade teachers are especially likely to incur the ire of parents because they frequently are the first to offer criticism of the children.

⁵

Grande acknowledged that Drydale had an unusually difficult class that year. Drydale's colleagues shared that assessment.

Her parents did not attempt to use medication to treat her problem because they wanted a second medical opinion about Jane's condition and they were scheduled to leave Germany in three weeks. That diagnosis was not conveyed to Drydale, or anyone else at BKES, before the school year started.

On the second day of school, as Drydale was preparing her class to go outside, Jane threw herself on the floor, crawled around, and would not respond to Drydale's attempt to correct her behavior. Drydale called the front office for assistance so as to not further disturb the other students in the class. Grande responded to the call, and removed the child. She was returned a short time later, but a second incident similar to the first occurred. Drydale again called the office for assistance, and the child was removed from the class a second time. Grande subsequently criticized Drydale in writing for not having contacted a counselor before calling for assistance.

Drydale discussed Jane's problem with her parents, both orally and in an exchange of correspondence. In that correspondence, Jane's mother acknowledged that Jane could not control her behavior much of the time, that she cannot comprehend instructions to accomplish more than one simple task, that she had the same problems the year before in Kindergarten, and that she needs expert help on a daily basis. The mother offered a few suggestions to Drydale. In the balance of the communications, Drydale and Jane's parents disagreed, in somewhat sharp tones, over who was failing to fulfill their responsibilities in dealing with Jane, and over the approach that Drydale should take in dealing with Jane. Grande did not counsel or discipline Drydale about her dealings with Jane's parents.

The parents of another girl Drydale taught during the 1997-98 school year (who will be referred to as Sally) requested to have her transferred to another class because the parents were dissatisfied with the quality of Drydale's teaching. Prior to the request, Grande told Drydale the mother wanted her to call to arrange an appointment. Drydale asked Grande to make the call. While Grande replied that Drydale should call the mother, Drydale did not because she was under the impression that Grande would do so. After the mother made the transfer request, Drydale sent her a note suggesting several dates and times to meet, and offering to meet at other mutually agreeable times suggested by the mother. Ultimately Sally was not transferred to another teacher.

E. Decision to Geographically Reassign Drydale Involuntarily

On May 25, 1999, Superintendent of the Kaiserslautern School District Kacik informed Drydale in writing that he had decided to reassign her to NES to teach second grade for the next school year because of "the extent of the concerns raised by the schools' administration, community members and the military command regarding your negative impact on the climate at the school." The reassignment was not intended as discipline or as a response to poor work performance by Drydale.

In reaching his decision, Kacik relied primarily on the following documents: a memorandum from Grande dated May 10, 1999; a letter from Tevnan dated May 17, 1999; a letter from parent Marti Nonamaker dated May 19, 1999; an undated letter from Cindi Yonts, sent to him by Nonamaker; a letter from Dolores Geise dated May 12, 1999, sent to him by Nonamaker; a letter from Cassandra Cammack, dated May 13, 1999, sent to him by Nonamaker; and a letter from LTC. John Wiseman, the military commander over the Kaiserslautern District, dated May 19, 1999.

In her memorandum Grande recommended that Drydale be reassigned to another school. She highlighted in her memorandum the most important reasons for her recommendation as follows:

- Many parents complained that Drydale has a negative impact on the school, primarily by using a demeaning and negative tone with children and parents;
2. Many parents requested that their children not be placed in Drydale's class;
3. Drydale would not discuss her behavior management plan, and her implementation of her plan indicates impatience with children, a lack of understanding of children's need for discipline, and unwillingness to work with children's parents to resolve problems;
4. Teachers complained about a lack of camaraderie and an atmosphere of intimidation at the school caused by Drydale, and have written to higher Association representatives about Drydale and have resigned their membership in the Association;
5. Drydale stated at an informal JCC meeting that she lacked professional respect for two teachers she named, and wrote a letter to ECAP[T]S that spoke negatively

about the selection of Tevnan as teacher of the year;
and

6. Drydale attempted to sabotage school improvement efforts, stated that she lacks support for school improvement, and stated that she and the former principal had arranged SIP projects so as to not create extra work for teachers.

Grande chose not to discipline Drydale or make any attempt to use her performance appraisal to deal with Drydale's conduct described in the memorandum.⁶ After recommending Drydale's transfer Grande recommended Drydale for a special act award of \$250.00 for Drydale's efforts in developing a guided reading library at BKES.

Tevnan stated the following in her letter to Kacik:

- Drydale has used her position as FRS to create unrest and division within the BKES staff by not always polling the staff, in whole or in part, when advising management of the Association's position on matters under discussion with management, and by conducting such polling in a manner that does not allow staff to express their views without revealing their identity;
- Drydale demonstrates opposition to sound educational policy by constantly criticizing programs that cater to small groups of children on the ground that inclusion of such programs in the curriculum does not provide breaks for classroom teachers, supporting an employee's grievance to eliminate a school counselor position, and insisting that specialists teach children in 50 minute periods so that classroom teachers and specialists have the same amount of preparation and planning time during the duty day;

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Grande acknowledged that one of the primary reasons for administering discipline to teachers, and for using an annual appraisal system, is encouraging improvement in teachers' conduct and performance. Grande offered no explanation for not attempting to change Drydale's behavior through the appraisal process. She chose not to use discipline because she considered it too difficult to administer, and because she was concerned that Drydale intertwined her FRS activities and her teaching so as to make discipline more difficult.

- Drydale is responsible for the elimination of special programs and events such as field trips for students, sports day, special speakers and awards assemblies;⁷
- Drydale is responsible for the turnover in principals at the school; and
- Drydale opposes SIP.

Nonamaker, who was the president of the Parent, Teacher, Students Association at BKES, stated the following in her letter to Kacik:

1. Drydale lacks professionalism;
2. Drydale has a reputation as a harsh educator who does not welcome parties or fun in her classroom, and uses inappropriate communication techniques with students;
3. Drydale has shown that she is not a team player by preventing the creation of an honor roll program and lobbied against the elimination of morning recess;⁸ and
4. Drydale appears incapable of supporting fellow educators, as demonstrated by her stated opposition to the selection of Tevnan as ECAP[T]S teacher of the year.

Yonts, a member of the school advisory committee at BKES, stated the following in her letter to Kacik:

- Drydale never smiles, and greets children each day with the words "you should not be here until 8:00;"⁹
- Drydale yells at and speaks condescendingly to students;

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Such programs and events were not eliminated. Drydale led the Association at BKES in acquiring funds to cover the cost of some special programs.

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Based on a teacher's request, Drydale actually proposed to Grande that the morning recess be terminated, and Grande raised the topic of honor roll for Drydale's consideration.

9

BKES policy discourages children from arriving at school before 8:00a.m.

- Drydale is heavily involved with the Association and places its policies above school and administration policies;
- Drydale opposed adding a second teacher to watch children during the morning recess; and
- Drydale does not dress professionally.

Geise stated in her letter to Kacik that her son and other students had been treated harshly by Drydale when in her class four years earlier.

Cammack stated in her letter to Kacik that her daughter had been a happy, confident and curious child when she entered Drydale's class, but became withdrawn, moody, and insecure during the few months she was in the class. She attributed the change to Drydale's treatment of the child. Cammack also stated that Drydale may or may not have asked her daughter how many parents she has.

Wiseman, after receiving from Nonamaker the same documents she sent to Kacik, stated in his letter to Kacik that he had heard members of the community express concerns about Drydale's classroom management techniques, her methods of interacting with children, her resistance to school improvements, and her overall negative effect on the school and community climates. He did not provide any specifics in support of his assertions.

E. Drydale's Involuntary Reassignment

Drydale objected to any decision to reassign her. She was nonetheless reassigned permanently to teach second grade at NES beginning the 1999-2000 school year.

The reassignment had serious adverse effects on Drydale. She had been able to walk to BKES from her home. NES is the school in the Kaiserslautern District farthest from her home. It now takes her more than one hour to commute each way. She also takes a train most of the way because the roads to Neubruecke are dangerous, especially in bad weather. The commute not only adds an expense Drydale did not have previously, it makes it difficult for her to interact with friends and support system, continue working in the theater, and perform normal daily chores such as getting to her bank before it closes. Because of her distance from BKES, she also cannot act as the FRS at the school.

The Kaiserslautern District included a number of schools more easily accessible to Drydale than NES. She was certified to teach a variety of courses at grade 1 through 12. During the school year 1999-2000, more than 100 temporary employees were employed throughout the Kaiserslautern District because permanent teachers like Drydale were not available to fill the positions.

F. Other Employees Involuntarily Transferred

All 10,000 teachers and administrators employed by DODDS sign a mobility agreement authorizing mandatory reassignments. Evidence was introduced about seven teachers who had previously been reassigned to different schools involuntarily for reasons other than the elimination of positions at a school or to meet specific teaching needs at a school. On two of those occasions, the transferred employees presented threats to the physical safety of coworkers. Two more employees were reassigned involuntarily because they acted in direct contradiction to decisions made by a district supervisor, that is, they were clearly insubordinate. One employee was reassigned in lieu of being discharged for poor performance. A principal was reassigned involuntarily because parents held the principal responsible for not controlling the vice principal, who had been caught taking pornographic pictures of cheerleaders and other students. The circumstances surrounding the seventh involuntary reassignment are not entirely clear, except to the extent that DODDS and the Association entered into an agreement settling a dispute over the propriety of the reassignment.

Discussion and Conclusions of Law

A. The Statute:

Section 7116 provides, in part:

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--

- any right (1) to interfere with, restrain, or coerce employee in the exercise by the employee of any under this chapter;
- any with of (2) to encourage or discourage membership in labor organization by discrimination in connection hiring, tenure, promotion, or other conditions employment;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition or has given any information or testimony under this chapter[.]

B. Letterkenny

Section 7116(a)(2) of the Statute prohibits an agency from treating an employee who has engaged in protected activity differently than it would, with respect to conditions of employment, had the employee not engaged in such activity. In *Letterkenny Army Depot*, 35 FLRA 113, 118 (1990), the FLRA set out the framework for determining if an action taken against an employee violates section 7116(a)(2) of the Statute. *Letterkenny* provides that in order to establish such a violation of the Statute the GC of the FLRA must prove by a preponderance of the evidence 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 in connection with hiring, tenure, promotion, or other conditions of employment." *Id.* at 118. If those conditions are established, an agency will be held to have violated the Statute unless, the "agency can demonstrate, by a preponderance of the evidence, that: (1) there was a legitimate justification for its action; and (2) the same action would have been taken even in the absence of protected activity." *Id.* The same analysis applies to section 7116(a)(4) of the Statute, although the protected activity relevant to the application of that section is limited to filing an unfair labor practice charge or representation petition, or otherwise providing information or testimony under the Statute. *Department of Veterans Affairs Medical Center, Brockton and West Roxbury, Massachusetts*, 43 FLRA 780 (1991).

The location at which an employee performs her work is a condition of her employment. *Department of Housing and Urban Development, Pennsylvania State Office, Philadelphia, Pennsylvania*, 53 FLRA 1635, 1649 (1998). Thus, by transferring Drydale from BKES to NES, a one hour commute away, DODDS took an action that adversely affected Drydale's working conditions.

C. Drydale's Activity on Behalf of FEA was Protected

Drydale, as FRS for the Association, was very aggressive and engaged in a substantial amount of activity protected by the Statute. Drydale's filing of contract grievances and unfair labor practices charges was protected

by the Statute. See *U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Coast and Geodetic Survey, Aeronautical Charting Division, Washington, DC, 54 FLRA 987, 1009 (1998)*.

Section 7102 grants employees the right to act for a labor organization. Drydale was acting for FEA when she attended, and dealt with Grande and other principals, in JCC meetings, which were established by the parties at Article 4 of their contract. Drydale enjoyed statutory protection when discussing and entering into agreements with Grande concerning such matters as teacher work schedules and assigning teachers to morning recess. Similarly, Drydale was acting for Association at the informal weekly meetings she had with Grande in early September 1998. Thus, her actions and statements during all of those meetings were protected, unless they amounted to flagrant misconduct.¹⁰ *Federal Bureau of Prisons, Office of Internal Affairs, Washington, DC and Federal Bureau of Prisons, Federal Correctional Institution Englewood, Littleton, Colorado, 53 FLRA 1500, 1514-19 (1998)*. Drydale was representing the Association when, as directed by the Association, she presented its objections to SIP when the subject was raised by management. She also engaged in protected activity when she asserted her contract right to leave the school/home partnership committee meeting at the end of her duty day. See *U.S. Department of Labor, Employment and Training Administration, San Francisco, California, 43 FLRA 1036 (1992)*. Finally, when Drydale communicated with the president of ECAPTS about its selection of Tevnan as teacher of the year, she was acting as the FRS on behalf of the bargaining unit employees who queried her about that selection.

D. Reasons for Drydale's Transfer

A review of the documents on which Kacik relied in deciding to reassign Drydale include numerous objections to actions she took on behalf of FEA and that clearly were protected by the Statute. The basis for the lack of camaraderie to which Grande refers in her memorandum of May 10, 1999, clearly is the disaffection of the specialists' resulting from Drydale's negotiation of work schedules to which they objected, and her response to their complaints. That is most evident from the reference to the specialists' communications with higher Association officials and resignation from the Association. Drydale's statements during the informal JCC meeting to which Grande's expressed objection in the memorandum are also protected.

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They did not constitute flagrant misconduct.

Finally, as stated above, Drydale's stated opposition to the SIP, another matter addressed in Grande's memorandum, was a protected expression of the Association's established position on the adverse effects of SIP on bargaining unit employees' work life.

Two of Tevnan's objections to Drydale concern her activities on behalf of the Association. These objections involved conferring with bargaining unit employees over matters under discussion with management and dealing with management over unit employees' conditions of employment, i.e., teachers' work schedules.

Nonamaker's complaint that Drydale is not a team player because she prevented the creation of an honor roll program and lobbied against the elimination of morning recess at BKES is not only factually incorrect, but any role Drydale might have had in such matters was in dealing with Grande as the FRS. Those dealings were, as stated above, protected by the Statute.

In her letter to Kacik, it is readily apparent that Yonts' greatest complaint against Drydale is that she acts too often and strongly as a FRS. Yonts states this complaint in the first paragraph of her letter and returns to that complaint twice more.

Kacik did not deny relying on any of these reasons for reassigning Drydale and he did rely on these communications. Thus, I conclude he did rely upon Drydale's having engaged in protected activity on behalf of FEA in determining to reassign her. Accordingly, the General Counsel has established a *prima facie* case that DODDS violated section 7116(a)(1), (2) and (4) of the Statute.

In order to rebut this *prima facie case* DODDS must show by a preponderance of the evidence that it would have reassigned Drydale to teach second grade at NES even if she had not engaged in protected activity.

Some of the reasons for reassigning Drydale contained in the documents on which Kacik relies do not concern Drydale's protected activity. However, with respect to the extent that Kacik's was concerned with whether Drydale actually was too harsh with students, had a poor behavior management plan, or had poor relations with colleagues and the parents of her students, it must be noted that there was no reason to believe that the transfer would result in any improvement by Drydale in those areas. Rather, as Grande acknowledged, improving those aspects of a teacher's performance is one of the primary goals of discipline or

performance evaluation. DODDS repeatedly denied that Drydale was transferred for misconduct or for poor performance.

Moreover, Drydale was transferred to teach second grade at NES. As Drydales' colleague Linda Batten testified without refutation, second grade students do not differ significantly from first grade students when it comes to how they react to classroom behavior management.

Two of the assertions in Tevnan's letter to Kacik, i.e., that Drydale was responsible for the turnover of principals at BKES and for the elimination of student field trips and other events at the school, were not supported by the record herein, and it is doubtful that Kacik gave them serious consideration. Similarly, the complaint in Nonamaker's letter that Drydale lacks professionalism and the complaints in Yonts' letter that Drydale does not dress professionally or smile at students, are too insubstantial to have justified Kacik's action.

The record fails to establish that the transfer would reasonably have been expected to change Drydale's approach to teaching. The reasons for reassigning Drydale remaining for legitimate consideration by Kacik do not establish, by a preponderance of the evidence, sufficient grounds for the reassignment of Drydale.¹¹

Finally, noting Drydale's favorable performance ratings over the years and the awards she received both for her activities in BKES and in the community, I conclude that DODDS has not established that it would have transferred her from BKES to NES had she not engaged in the protected activity on behalf of FEA.

Accordingly, I conclude that the Department of Defense Dependents Schools violated section 7116(a)(1), (2) and (4) of the Statute as alleged.

Having founded that the Department of Defense Dependents Schools violated the Statute, I recommend that the Authority adopt the following Order:

¹¹

DODDS has not presented any reason to justify transferring Drydale to the farthest reaches of the Kaiserslautern District rather than a school closer to her home, despite her certification to teach several subjects at numerous schools in the District that are closer to her home.

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 Defense Dependents Schools, shall:

B.A Cease and desist from:

(a) Encouraging or discouraging membership in the Federal Education Association by unlawfully discriminating in the geographic reassignment of Roseann Drydale, or any other employee, because she engaged in activity protected by the Federal Service Labor-Management Relations Statute.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

B.B Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Reassign Roseann Drydale to a position as a first grade teacher at Bad Kreuznach Elementary School;

(b) Post at its facilities in the Kaiserslautern School District 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 Superintendent of the Kaiserslautern District of the Department of Defense Dependents Schools, and 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, Washington Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply with the order.

Issued, Washington, DC, July 31, 2000.

SAMUEL A. CHAITOVITZ
Chief 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 Defense Dependents Schools, 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 encourage or discourage membership in the Federal Education Association, by unlawfully discriminating in the geographic reassignment of Roseann Drydale, or any other employee, because she engaged in activity protected by the Federal Service Labor-Management Relations Statute.

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, reassign Roseann Drydale to the position of first grade teacher at Bad Kreuznach Elementary School.

(Activity)

Date: _____ 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, Washington Regional Office, Federal Labor Relations Authority, whose address is: 800 K Street, N.W., Suite 910, Washington, DC 20001, and whose phone number is: (202)482-6700.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. WA-CA-90570, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Thomas Bianco, Esquire
Federal Labor Relations Authority
800 K Street, NW., Suite 910
Washington, DC 20001

P168-060-208

James Lewis, Esquire
DoDDS, LRS, 7th Flr.
4040 N. Fairfax Drive
Arlington, VA 22203

P168-060-209

Michael Bauernfeind, Esquire
FEA, Europe
1627 34th Street, N.W.
Washington, DC 20007

P168-060-210

REGULAR MAIL:

Roseann Drydale
CMR 438, Box 1155
APO AE 09111

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: JULY 31, 2000
WASHINGTON, DC