

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

MEMORANDUM

DATE: June 14, 1996

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ  
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C.

Respondent

AND

U.S. DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION  
SERVICE, NEW YORK DISTRICT  
NEW YORK CITY, NEW YORK

Respondent

AND

U.S. DEPARTMENT OF JUSTICE  
OFFICE OF THE INSPECTOR GENERAL  
WASHINGTON, D.C.

Respondent

and  
BN-CA-50156  
CA-50698

Case Nos. BN-CA-50149  
BN-

BN-CA-50701

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1917, AFL-CIO

BN-CA-50700

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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 transcript, exhibits and any briefs filed by the parties.

Enclosures

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

<p>U.S. DEPARTMENT OF JUSTICE  WASHINGTON, D.C.</p> <p>Respondent</p> <p>AND</p> <p>U.S. DEPARTMENT OF JUSTICE  IMMIGRATION AND NATURALIZATION  SERVICE, NEW YORK DISTRICT  NEW YORK CITY, NEW YORK</p> <p>Respondent</p> <p>AND</p> <p>U.S. DEPARTMENT OF JUSTICE  OFFICE OF THE INSPECTOR GENERAL  WASHINGTON, D.C.</p> <p style="text-align: center;">Respondent</p>	
<p>and</p> <p>AMERICAN FEDERATION OF GOVERNMENT  EMPLOYEES, LOCAL 1917, AFL-CIO</p> <p style="text-align: center;">Charging Party</p>	<p>Case Nos. BN-CA-50149  BN-CA-50156  BN-CA-50698  BN-CA-50700  BN-CA-50701</p>

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **JULY 15,**  
**1996,** and addressed to:

Federal Labor Relations Authority  
Office of Case Control  
607 14th Street, NW, 4th Floor  
Washington, DC 20424-0001

SAMUEL A. CHAITOVITZ  
Chief Administrative Law

Judge

Dated: June 14, 1996  
Washington, DC

**UNITED STATES OF AMERICA**  
**FEDERAL LABOR RELATIONS AUTHORITY**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**WASHINGTON, D.C. 20424-0001**

<p>U.S. DEPARTMENT OF JUSTICE WASHINGTON, D.C.</p> <p>Respondent</p> <p>AND</p> <p>U.S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE, NEW YORK DISTRICT NEW YORK CITY, NEW YORK</p> <p>Respondent</p> <p>AND</p> <p>U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL WASHINGTON, D.C.</p> <p style="text-align: center;">Respondent</p>	
<p>and</p> <p>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1917, AFL-CIO</p> <p style="text-align: center;">Charging Party</p>	<p>Case Nos. BN-CA-50149 BN-CA-50156 BN-CA-50698 BN-CA-50700 BN-CA-50701</p>

Scott D. Cooper, Esq.  
For Respondents

Ignatius A. Gentile  
For Charging Party

Gary J. Lieberman, Esq.  
For the General Counsel  
of the 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, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, *et seq.* (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA or Authority), 5 C.F.R. § 2411, *et seq.*

Based upon unfair labor practice charges filed by the American Federation of Government Employees, Local 1917, AFL-CIO (AFGE Local 1917 or Union), in Case Nos. BN-CA-50149, BN-CA-50156, BN-CA-50698, BN-CA-50700, and BN-CA-50701 against U.S. Department of Justice, Washington, D.C. (DOJ); U.S. Department of Justice, Immigration and Naturalization Service, New York District, New York, N.Y. (NY INS); and U.S. Department of Justice, Office of the Inspector General, Washington, D.C. (OIG),<sup>1</sup> a Consolidated Complaint and Notice of Hearing was issued in Case Nos. BN-CA-50149 and BN-CA-50156 and a Consolidated Complaint and Notice of Hearing was issued in Case Nos. BN-CA-50698, BN-CA-50700, and BN-CA-50701 on behalf of the General Counsel (GC) of the FLRA by the Acting Regional Director for the Boston Region of the FLRA and by the Regional Director for the Boston Region of the FLRA, respectively. The Respondents filed timely Answers to the Complaints denying they had violated the Statute. The Complaints were then consolidated by order of the Acting Regional Director of the Boston Region of the FLRA. The Consolidated Complaints allege that Respondents violated § 7116(a)(1) and (8) of the Statute by failing to comply with the provisions of § 7114(a)(2)(B) of the Statute by denying bargaining unit employees union representation at examinations in which they reasonably feared disciplinary action.

A hearing was held in this matter in New York City, New York. All parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondents and GC of the FLRA filed post hearing briefs which have been carefully considered.

Based upon the entire record<sup>2</sup>, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

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1

The Respondents named in each separate charge will be set forth and discussed herein in Discussion and Conclusions of Law.

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GC of the FLRA filed a Motion to Correct Transcript. No opposition to this Motion has been filed. Accordingly, the Motion, which is attached hereto as Attachment A, is **GRANTED**, and the requested corrections in the transcript are hereby made.

## Findings of Fact

### A. Background

#### 1. AFGE and INS.

The American Federation of Government Employees (AFGE) is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Immigration and Naturalization Service (INS), a component of DOJ. AFGE Local 1917 is an agent of AFGE for representing employees at INS, including NY INS' Immigration Inspectors at JFK International Airport, New York, and Detention Enforcement Officers at the Service Processing Center, 201 Varick Street, New York. Ignatius Gentile is the President of the Union. Edward J. McElroy is the District Director for NY INS.

#### 2. OIG Established by the Inspector General Act of 1978.

OIG, a component of DOJ, was established by Congress in 1978 with the enactment of the Inspector General Act, 5 U.S.C. app. §§ 1-12 (IG Act). In establishing the Office of Inspectors General for federal agencies, Congress sought "to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of . . . departments and agencies." S.Rep. No. 1071, 95th Cong., 2d Sess. 1 (1978), reprinted in 1978 U.S.C.C.A.N. 2676. In each specified governmental agency, the Office of the Inspector General was charged with the responsibility of conducting and supervising audits and civil and criminal investigations relating to the agency's operations, and to provide a means for keeping the head of the establishment and the Congress fully informed about problems and deficiencies of such programs. 5 U.S.C. app. §§ 2(1), (3) and 4(a)(1). The IG Act also provides that the Inspectors General are under the "general supervision" of the agency head, in this case, the head of the Department of Justice, the Attorney General. 5 U.S.C. app. § 3(a). However, under the IG Act "the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing subpoena during the course of any audit or investigation." 5 U.S.C. app. § 3(a).

Howard L. Sribnick is the General Counsel of the Inspector General of DOJ. Sribnick is routinely advised by the Labor Management Relations Group of the Justice Management Division of the DOJ of the current status of the



law including decisions by Federal Courts and the Federal Labor Relations Authority and he advised OIG of the case law involving § 7114(a)(2)(B) of the Statute. There was no evidence presented at hearing that the head of DOJ, the Attorney General, had any role in advising OIG, nor was there any evidence that anyone at DOJ directed OIG to ensure compliance with the Statute.<sup>3</sup>

B. OIG Investigates Three Bargaining Unit Employees at JFK International Airport

The Immigration Inspectors employed by NY INS are responsible for enforcing the immigration laws of the United States, including determinations of the admissibility of arrivals at JFK International Airport (JFKIA). Henry H. Dang, Mike Lixandriou and Jerry Pollatos are employed by NY INS as Immigration Inspectors assigned to JFKIA, and are in the Union's bargaining unit.<sup>4</sup>

In November 1994 and January 1995, Immigration Inspectors who worked at JFKIA, including, Inspectors Dang, Lixandriou and Pollatos were interrogated by Special Agents of OIG. The investigations concerned Sorota, allegations about being involved with the "night riders", accepting of bribes from Chinese nationals, assisting family members in immigration matters, and misuse of INS's computer system.

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Special Agent Grogan testified that if instructed, he would comply with an Attorney General direction for him to abide by an employee's section 7114(a)(2)(B) rights under the Statute. On further examination Special Agent Grogan testified his answer would be different assuming the Attorney General could not direct the OIG how to conduct an investigation.

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In November 1993, George Sorota, an Immigration Inspector for NY INS employed at JFKIA and a steward for the Union, was advised that he was the subject of an investigation by OIG. After learning of the investigation, Sorota spoke with Stephen Grogan, a Special Agent employed by OIG, at the office of OIG at JFKIA. Grogan informed Sorota that the source of the complaints that led to the investigation came from management at JFKIA (NY INS), but that he could not be specific in naming the source. Sorota was investigated by OIG about allegations that he was involved in espionage, and being a participant in a group termed the "night riders." The "night riders" were an alleged group of Immigration Inspectors that patrolled the streets on their off duty time actively searching for criminal activity in order to make arrests. Sorota was questioned by OIG on three separate occasions between November 1993 and March 1995.

The January 1995 interrogations of Inspectors Dang, Lixandroiu and Pollatos by OIG were of an administrative nature, since the U.S. Attorney's office had declined criminal prosecution. No administrative action has been taken against any of these employees.

1. The interrogation of Immigration Inspector Mike Lixandroiu.

Mike Lixandroiu has worked as an Immigration Inspector for NY INS for approximately 8½ years. On January 11, 1995, Lixandroiu was working the 10 a.m. to 6 p.m. shift in the Delta Terminal of JFKIA. An hour into the shift, Lixandroiu was given a direct order by Thomas Spellman, the Assistant Area Port Director of NY INS, to meet with agents of the OIG at 12 o'clock noon. At that point, Lixandroiu made his initial request for a Union representative, which was denied by Spellman. Subsequently, a fellow employee drove Lixandroiu in a government vehicle to OIG's office in Building 77, about a 5 to 10 minute drive from the JFKIA arrivals building.

Lixandroiu was ushered into an interrogation room furnished with a table and a two-way mirror. Two agents of OIG walked in and identified themselves with credentials. One of the agents was Grogan. Prior to questioning, Lixandroiu was informed by Grogan that the subject of the investigation was administrative in nature, involving the abuse of authority or misconduct. Grogan informed Lixandroiu that following his investigation the report would be forwarded to INS for any action to be taken.

At that point, Lixandroiu requested a Union representative to be present at the interrogation. Agent Grogan denied Lixandroiu the right to have a Union representative present during the interrogation, and explained to him that he no longer possessed that right. After Grogan requested that Lixandroiu sign a form waiving his rights, Lixandroiu informed the agents that he did not wish to speak with them. Grogan advised Lixandroiu that he could leave the interrogation, but that the consequence of leaving the interrogation would be that he would be fired.

If an employee does not cooperate in an investigation by the Inspector General, the procedure is for the OIG agent to contact the employee's supervisor, in this case Lixandroiu's supervisor, a management official of NY INS, advise him or her that the employee is refusing to answer questions, and request that the supervisor direct that employee to answer the questions. The employee would be

subject to discipline by the employee's agency, in this case, NY INS.

Following another request from Lixandroiu for a Union representative, and another denial, Grogan conducted the interrogation of Lixandroiu.

The interrogation of Lixandroiu lasted in excess of four hours, without any breaks or any water. At the end of the questioning, Lixandroiu was directed to sign notes that were taken during the interview by one of the Special Agents of OIG, and a waiver form. Lixandroiu refused to sign until he had a full understanding of what was taking place. After being sworn in, Lixandroiu made his last request to have a Union representative, to which the Special Agents informed him that he did not have any rights. Lixandroiu refused to sign the papers, and he was brought back to his work site by another Immigration Inspector in a government vehicle.

Lixandroiu reasonably believed the examination by the OIG agents could result in disciplinary action against him.

2. The interrogation of Immigration Inspector Henry Dang.

Henry Dang has been an Immigration Inspector with NY INS since June 1989. On November 29, 1994, while working the 1300 to 2100 shift, Dang was ordered to the OIG office by Edward Hollis, the Area Assistant Port Director for NY INS. Dang, like Lixandroiu, was not informed why he was called in for questioning, but was concerned and requested that Hollis provide him with a Union representative. Hollis responded for Dang to go to the OIG's office, and make his request directly to the OIG agents. Dang was driven to the OIG office by another Immigration Inspector in a government vehicle.

Upon Dang's arrival to OIG's office, Grogan led him into an interrogation room where Special Agent Mark Kelly was present. Dang immediately asked Grogan whether he was the subject of the investigation, or a witness, to which the OIG agents replied that it depended on how he answered their questions. Dang requested to have his Union representative or an attorney present, to which the OIG agents replied that he did not have a right to representation due to a recent change in the law. Grogan warned Dang that if he did not cooperate fully with the investigation, he would be subject to termination. Dang was then asked to sign two waiver forms, which he maintains he signed under duress and with no knowledge of what he was signing. Dang was advised that they were also asking questions about Dang, and that it was

strictly administrative, with no criminal charges against him.

After two or three hours of interrogation Dang was asked to sign a statement. Dang was driven back to the worksite in a government vehicle by a coworker.

On March 29, 1995, Dang received a letter from John Chase, Director, Office of Internal Audit, INS, dated February 9, 1995, that provided:

An inquiry has been conducted concerning allegations that you forcefully took monies from Chinese nationals at John F. Kennedy Airport, that you took monies from Chinese nationals seeking asylum, and that you asked a Service employee to give your mother citizenship without taking the required test.

We have closed the case and will not pursue the matter any further, unless new evidence comes to our attention.

In accordance with Service policy, no record of this inquiry will be placed in your Official Personnel Folder.

Dang had a reasonable belief that the examination could result in disciplinary action against him.

3. The interrogation of Immigration Inspector Jerry Pollatos.

Jerry Pollatos was questioned by Grogan of OIG on or about November 21, 1994. Pollatos had a reasonable belief that the interview could result in disciplinary action. Pollatos requested Union representation and was denied union representation by Grogan.

#### C. OIG Investigates Three Bargaining Unit Employees at the Service Processing Center, 201 Varick Street, New York

The Service Processing Center at 201 Varick Street, New York (201 Varick Street) is a holding detention center for criminal aliens. Detention Enforcement Officers, employed by NY INS, and assigned to 201 Varick Street, are responsible for the transportation and custody of criminal aliens from local jails and state facilities, and for the execution of arrest warrants and the deportation of criminal aliens. Sebastian Mason, Joseph Young, and Edgar Rances are employed by NY INS as Detention Enforcement Officers

assigned 201 Varick Street, and are in the Union's bargaining unit.

McElroy, the District Director for NY INS maintains a policy that Detention Enforcement Officers can not purchase or carry personal firearms, and employees who have violated that policy in the past were terminated from employment by NY INS. In August 1995, Mason, Young and Rances were interrogated by Special Agents of OIG concerning ownership of personal firearms. No administrative action has been taken against any of these employees.

1. The investigation of Detention Officer Sebastian Mason.

In August 1995, Mason, while working at the Detention Center was given a direct order from his first line supervisor to meet with agents from OIG on the 6th floor of the

Center.<sup>5</sup> The two individuals, one male and one female, identified themselves as agents of OIG. Although Mason was not informed what the investigation was about, he had a reasonable fear of discipline and requested to have a Union representative present during the questioning. The OIG agents responded that there was no need for a Union representative because it was an administrative matter and not a criminal matter.

The interrogation continued with an OIG agent writing down the answers and, after the questioning was over, Mason was sworn in, and he signed a copy of the notes. The agents also informed Mason that NY INS initiated the investigation because inquiries were made by the District Director wanting to know why so many employees were violating his firearms policy. Finally, the OIG agents informed Mason that the information was being gathered to be reviewed by the District Director, who would make the determination if disciplinary action was warranted.

2. The investigation of Detention Officer Joseph Young.

Young was questioned by agents of OIG during the same time period as Mason (August 1995), and over the same subject matters. Young was ordered by his first line supervisor to go to the 6th floor to meet with two agents from OIG. After identifying themselves the agents for OIG began asking Young questions about his knowledge of the

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OIG does not maintain an office at the Detention Center, but was using office space from NY INS.

District Director's firearms policy, and whether Young owned a firearm and where he kept it. After several questions Young requested a Union representative, to which the agents instructed Young to sit down and that he did not need a representative or a lawyer. At the end of the questioning, Young signed a statement and then was sworn in. Young was told by OIG's agents that the District Director for NY INS initiated the investigation, and it would be up to the District Director of NY INS to determine if there would be any disciplinary measures taken. Disciplinary action had not been taken against Young at the time of hearing.

3. The investigation of Detention Officer Edgar Rances.

Edgar Rances was questioned by Agent Phil Turull and/or Agent Mary Chui by OIG on or about August 12, 1995. Rances had a reasonable belief that an interview could result in disciplinary action, but was denied Union representation by OIG agents Turull and Chui.

Discussion and Conclusions of Law

A. Charges and Consolidated Complaints

In their brief Respondents renewed their motion that OIG be dismissed from Cases Nos. BN-CA-50149 and BN-CA-50698 because OIG was not mentioned in the charges. Respondents base this upon § 7118(a)(4) of the Statute, which provides that no complaint can be issued on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority. Respondents argue that if a complaint can be issued against a party not named in the charge, § 7118(a)(4) of the Statute would be rendered meaningless. I need not reach this argument because the Consolidated Complaints in this case are based on pairs or groups of charges. Thus while OIG was indeed not named in the charge filed in Case No. BN-CA-50149, OIG was named in the charge filed in Case No. BN-CA-50156. Both charges dealt with the same series of incidents and both charges were the basis for the Consolidated Complaint. The complaint, therefore was based upon a charge that named OIG. There is no requirement that every respondent be named in every charge upon which a complaint is issued. Rather, as was done here, each respondent was named in a separate charge that involved the same incidents. This is a reasonable approach to giving each respondent notice that it is the subject of an unfair labor practice allegation and the nature of the allegation.

Respondents also argue that NY INS should be dismissed from BN-CA-50156, BN-CA-50700 and BN-CA-50701 because it was not named in these individual charges. But INS was named in the charges in Case Nos. BN-CA-50149 and BN-CA-50698, which, as discussed above were the basis of the Consolidated Complaints. Thus the Consolidated Complaints herein, insofar as they involve NY INS and OIG, are based on charges that named NY INS and OIG.

Accordingly Respondents' renewed motion is without merit and is denied.

B. Sections 7114(a)(2)(B) and 7116(a)(1) and (8) of the Statute

Section 7114(a)(2)(B) provides:

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at-

\* \* \*

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

Section 7116(a) (1) and (8) provides:

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

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

\* \* \*

(8) to otherwise fail or refuse to comply with any provision of this chapter.

#### C. The examinations

The record herein establishes that the six employees of NY INS, the three Immigration Inspectors at JFKIA and the three Detention Officers at the Detention Center, that are the subject of this proceeding were examined by OIG agents, were employees of NY INS and were members of the unit represented by AFGE Local 1917.

Further the record herein establishes that each of the six NY INS employees reasonably believed that his examination by OIG agents could result in disciplinary action and each requested of the OIG agents that the employee be permitted Union representation.<sup>6</sup> Each request for Union representation was denied by the OIG agents.

#### D. OIG and DOJ

The GC of the FLRA, relying on *Headquarters, National Aeronautics and Space Administration Center, Washington, D.C., and National Aeronautics and Space Administration, Office of the Inspector General, Washington, D.C., 50 FLRA 601 (1995), petition for enforcement Case Nos. 95-6630 & 95-6690 (11th Cir.) (NASA); and Department of Defense, Defense Criminal Investigative Service, Defense Logistics Agency and Defense Contract Administration Services Region, New York, 28 FLRA 1145 (1987) (DOD, DCIS), enforced sub nom. Defense Criminal Investigative Service, enforced sub nom. Defense Criminal Investigative Service,*

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Certain of the NY INS employees also requested Union representation of the NY INS supervisor who told the employees of the OIG examination. The NY INS supervisor either denied the request or told the employees to make the request of the OIG agents.



*Department of Defense v. FLRA*, 855 F.2d 93 (3rd Cir. 1988) (DCIS), that OIG was a representative of DOJ when it investigated the bargaining unit employees at JFKIA and Detention Center and both DOJ and OIG violated the Statute when the employees were denied their requests for union representation.

Respondents, relying primarily on *U.S. Department of Justice v. FLRA*, 39 F.3d 93 (D.C. Cir. 1994) (USDOJ), contend that OIG and DOJ did not violate the Statute. With respect to the position that DOJ can not be responsible for OIG conduct, Respondents also rely on *DOD, DCIS, DCIS and Nuclear Regulatory Commission, Washington, D.C. v. FLRA*, 25 F.3d 229 (4th Cir. 1994) (NRC).

With respect to the OIG, the Authority in *NASA* held that NASA-OIG investigator acted as a "representative of the agency"<sup>7</sup> within the meaning of § 7114(a)(2)(B). The Authority recognized that NASA-OIG is a separate investigative component of NASA-HQ, created by the IG Act, that operates through its own chain of command. In *NASA* the Authority, after a thorough analysis of the Statute, rejected the D.C. Circuit's position in *USDOJ*, and held that NASA-OIG is a "representative of the agency" within the meaning of § 7114(a)(2)(B). *NASA* at 612-620; see also *DCIS and DOD, DCIS*.

Accordingly, in the subject case I conclude that OIG is a representative of DOJ within the meaning of § 7114(a)(2)(B) and the six employees of NY INS, a component of DOJ, were entitled to have union representation at the examinations conducted by the OIG agents. The OIG agents' denials of the requested union representation interfered with the rights of unit employees at NY INS and violated § 7116(a)(1) and (8) of the Statute.

With respect to NASA-HQ, the parent organization in the *NASA* case, the Authority found that OIG represented "not only the interests of OIG, but ultimately NASA, HQ and its subcomponent offices." *Id.* at 621. The Authority, noting that the IG Act specifically provides that the IGs report to and are under the supervision of the head of the agency, found that NASA HQ was responsible for the statutory violations committed by its OIG. The Authority went on to state that NASA HQ was responsible "for the manner in which OIG conducts investigative interviews pursuant to section 7114(a)(2)(B) fully effectuates the purposes of the Statute." *Id.* at 621.

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The agency in *NASA* is NASA-HQ.

In light of the Authority decision and careful reasoning in *NASA*, I conclude DOJ was represented by and responsible for the manner in which OIG conducted the examinations in the subject case. *Id.* at 622. In the subject case the record fails to establish that DOJ advised OIG of the employees' rights under § 7114(a)(2)(B) of the Statute or that OIG should grant the employees the right to union representation.<sup>8</sup> Accordingly, I conclude that DOJ was responsible for the conduct of OIG and, therefore, that DOJ violated § 7116(a)(1) and (8) of the Statute.

E. NY INS

NY INS, relying upon *DOD*, *DCIS*, argues that NY INS can not be held liable for the acts of the OIG because a component agency could not have influence on the OIG. The Authority affirmed the perceptive ALJ who stated that, "although DCIS and DLA are both part of the DOD, I conclude DCIS is so independent of DLA and in fact so independent within DOD, that DCIS and its investigators are not agents or representatives of DLA." *Id.* at 1163. The Authority noted that Defense Contract Administration Services Management Area summoning employees and providing rooms for DCIS was not sufficient to make it responsible for the DCIS conduct.

The record in the subject case, however, shows more involvement by the component agency in the OIG investigation. NY INS was an active participant in the OIG examination and, in fact played a pivotal role.

NY INS was not a mere bystander, or even a limited participant, to OIG's examinations of its employees. Thus NY INS initiated the OIG investigations of the three Detention Officers, NY INS instructed its employees to attend the OIG examinations, NY INS would receive the results of these OIG administrative investigations and decide upon the appropriate administrative action to be taken against its employees. Most important, if the employee refused to cooperate with the OIG examination, NY INS would, at the request of the OIG agent, order the employee to cooperate in the investigation or be disciplined by NY INS for failing to follow an order. Thus NY INS was the force that compelled its own employees to give up their statutory rights and participate in the OIG examinations.

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Although OIG's General Counsel may have advised OIG of the status of the law, the record does not establish that anyone from DOJ or OIG instructed the OIG agents to grant INS employees their statutory rights.

NY INS did not tell employees that they could invoke their rights under § 7114(a)(2)(B) of the Statute and NY INS did not tell their employees that if the OIG did not let the employees exercise their statutory rights NY INS would not require the employees to cooperate with the OIG agents.

Accordingly, I conclude that *DOD, DCIS* is distinguishable and, in the subject situation, NY INS actively participated in denying their own employees their statutory rights, with respect to OIG examinations and that NY INS violated § 7116(a)(1) and (8) of the Statute. *Cf. U.S. Department of Labor, Mine Safety and Health Administration, 35 FLRA 790 (1990) (holding Mine Safety and Health Administration liable for the illegal actions of the Department's IG in a case where the IG was not charged).*

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

#### **ORDER**

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Statute, U.S. Department of Justice, Washington, D.C.; U.S. Department of Justice, Immigration and Naturalization Service, New York District, New York City, New York; and U.S. Department of Justice, Office of the Inspector General, Washington, D.C., shall:

1. Cease and desist from:

(a) Requiring any bargaining unit employee of the U.S. Department of Justice, Immigration and Naturalization Service, New York District, New York City, New York, to take part in any examination conducted pursuant to section 7114(a)(2)(B) of the Statute without allowing the American Federation of Government Employees, Local 1917, AFL-CIO, or any other exclusive collective bargaining representative of the employee, to participate in such examination, when such representation has been requested by the employee.

(b) In any like or related manner, interfering with, restraining or coercing Immigration and Naturalization Service employees in their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) U.S. Department of Justice shall order U.S. Department of Justice, Office of the Inspector General to comply with the requirements of section 7114(a)(2)(B) of the

Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

(b) U.S. Department of Justice, Office of the Inspector General shall comply with the requirements of section 7114(a)(2)(B) of the Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

(c) U.S. Department of Justice, Immigration and Naturalization Service will not instruct its employees to cooperate with the Office of the Inspector General if it fails to comply with the requirements of section 7114(a)(2)(B) of the Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

(d) Not take disciplinary or other action against Immigration and Naturalization Service employees Henry H. Dang, Mike Lixandriou, Jerry Pollatos, Sebastian Mason, Joseph Young, and Edgar Rances as a result of any information acquired as a result of their examinations by agents of the Office of the Inspector General in November 1994, and January and August 1995, when these employees requested and were denied representation by American Federation of Government Employees, Local 1917, AFL-CIO.

(e) Post at the facilities of the New York District of the Immigration and Naturalization Service where bargaining unit employees are located, copies of the attached Notices on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by U.S. Attorney General, by the Inspector General of the U.S. Department of Justice, and by the Director of the New York District, U.S. Immigration and Naturalization Service, as appropriate and shall be posted 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 insure that such Notices are not altered, defaced, or covered by any other material.

(f) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Boston Region, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, June 14, 1996

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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 U.S. Department of Justice, Washington, D.C., 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 require any bargaining unit employee of the U.S. Department of Justice, Immigration and Naturalization Service, New York District, New York City, New York, to take part in any examination conducted pursuant to section 7114 (a) (2) (B) of the Statute without allowing the American Federation of Government Employees, Local 1917, AFL-CIO, or any other exclusive collective bargaining representative of the employee, to participate in such examination, when such representation has been requested by the employee.

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

WE WILL comply with the requirements of section 7114(a) (2) (B) of the Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

(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 of the Federal Labor Relations Authority, Boston Region, 99 Summer Street,

Suite 1500, Boston, Massachusetts 02110-1200, and whose  
telephone number is: (617) 424-5743.



**NOTICE TO ALL EMPLOYEES**

**POSTED BY ORDER OF THE**

**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations authority has found that Immigration and Naturalization Service, New York District, New York City, New York, 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 require any bargaining unit employee of ours to take part in any examination conducted pursuant to section 7114(a) (2) (B) of the Statute without allowing the American Federation of Government Employees, Local 1917, AFL-CIO, or any other exclusive collective bargaining representative of the employee, to participate in such examination, when such representation has been requested by the employee.

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

WILL NOT instruct our employees to cooperate with the Office of the Inspector General if it fails to comply with the requirements of section 7114(a) (2) (B) of the Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

WE WILL take no disciplinary or other action will be taken against INS employees Henry H. Dang, Mike Lixandriou, Jerry Pollatos, Sebastian Mason, Joseph Young, and Edgar Rances as a result of any information acquired as a result of their examinations by agents of the Office of the Inspector General in November 1994, and January and August 1995, when these employees requested and were denied representation by American Federation of Government Employees, Local 1917, AFL-CIO.

(Activity)

Date:

By:

(Signature) (Title)

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**NOTICE TO ALL EMPLOYEES**

**POSTED BY ORDER OF THE**

**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations authority has found that U.S. Department of Justice, Office of the Inspector General, Washington, D.C., 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 require any bargaining unit employee of the U.S. Department of Justice, Immigration and Naturalization Service, New York District, New York City, New York, to take part in any examination conducted pursuant to section 7114 (a) (2) (B) of the Statute without allowing the American Federation of Government Employees, Local 1917, AFL-CIO, or any other exclusive collective bargaining representative of the employee, to participate in such examination, when such representation has been requested by the employee.

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

WE WILL order U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL to comply with the requirements of section 7114(a) (2) (B) of the Statute when conducting investigatory examinations of employees pursuant to that section of the Statute.

WE WILL NOT take disciplinary or other action against INS employees Henry H. Dang, Mike Lixandroiu, Jerry Pollatos, Sebastian Mason, Joseph Young, and Edgar Rances as a result of any information acquired as a result of their examinations by agents of the Office of the Inspector General in November 1994, and January and August 1995, when these employees requested and were denied representation by American Federation of Government Employees, Local 1917, AFL-CIO.

(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 of the Federal Labor Relations Authority, Boston Region, 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, and whose telephone number is: (617) 424-5743.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case Nos. BN-CA-50149, BN-CA-50156, BN-CA-50698, BN-CA-50700, BN-CA-50701, were sent to the following parties in the manner indicated:

**CERTIFIED MAIL:**

Scott D. Cooper, Esq.  
Labor Management Relations  
U.S. Department of Justice  
1331 Pennsylvania Avenue, NW  
Washington, DC 20530

Mr. Ignatius A. Gentile  
American Federation of Government  
Employees, Local 1917, AFL-CIO  
P.O. Box 684  
Church Street Station  
New York, NY 10278

Gary J. Lieberman, Esq.  
Federal Labor Relations Authority  
99 Summer Street, Suite 1500  
Boston, MA 02110-1200

**REGULAR MAIL:**

National President  
American Federation of Government  
Employees, AFL-CIO  
80 F Street, NW  
Washington, DC 20001

Dated: June 14, 1996  
Washington, DC