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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1857, AFL-CIO Respondent and MARY ELIZABETH CRAWFORD, AN INDIVIDUAL Charging Party	Case No. 9-CO-10005

Steven Fesler, Business Agent
For the Respondent

Yolanda C. Shepherd, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on March 12, 1991, by the Regional Director for the San Francisco Regional Office, Federal Labor Relations Authority, a hearing was held before the undersigned on May 1, 1991.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et seq., (herein called the Statute). It is based on an amended charge filed on March 7, 1991 by Mary Elizabeth Crawford, an individual, (herein called Crawford or the Charging Party) against American Federation of Government Employees, Local 1857, AFL-CIO (herein called the Union or Respondent).

The Complaint alleged, in substance, that Respondent suspended Crawford on January 19, 1990 from her position as steward of Respondent, and it notified Crawford on June 15, 1990 that the suspension was upheld by its Executive Board; that such suspension was due, in part, because Crawford caused employee Valerie Robin to file an unfair labor practice charge against Respondent - all in violation of section 7116(b)(1) of the Statute.

Respondent's Answer, dated April 3, 1991, admits the factual allegations in the Complaint, but denies that its conduct is violation of the Statute.

All parties were represented at the hearing. Briefs were filed with the undersigned on June 14, 1991 and have been duly considered.

Upon the entire record herein, from my observation of the witnesses and their demeanor, and from all of the evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein Respondent Union has been, and still is, the exclusive representative of an appropriate unit of employees who are employed at the Sacramento Air Logistics Center, McClellan Air Force Base, Sacramento, California.

2. The Charging Party, Mary E. Crawford, is employed as an Inventory Management Specialist at McClellan Air Force Base, Sacramento, California.

3. Crawford became a member of the Union and a steward in April 1987. As a steward she represented employees working at the Directorate of Procurement and Material Management, which comprised about 2,500 employees. She filed grievances on behalf of employees in addition to other duties as a union representative.

4. On December 11, 1989 employee Fred White handed a note to Union Steward Robert Nolan, addressed to the Union. White stated therein that he requested the withdrawal of all grievances filed against the PM Directorate; that the August 1989 grievance was handled by Crawford as his representative.

5. In a memo dated December 11, 1989 Union Steward Robert Nolan wrote that White gave him the note referred to

above; that White said he asked Crawford to withdraw the said grievance, but Crawford told him it was not necessary since the Executive Board would vote that no further action be taken.[1/]

6. Employee Valerie Hobin filed an unfair labor practice charge on December 15, 1989 with the Authority against the Union. The charge alleged that she was restrained in the exercise of her rights based on a refusal to properly represent her because she was not a Union member. An attachment to the charge reflects that on December 5, 1989 Crawford, who was in the Union office, had been asked to sign off on the Arbitration Committee's decision on her grievance; that Crawford was upset since the Committee decided not to take Hobin's grievance to arbitration; that a member of the Committee, Kerry Crutcher, informed Crawford there was no sense in doing so since Hobin's appraisal could only be increased by 7 or 8 points.[2/]

7. John V. Salas, President of the Union, wrote Hobin in December 13, 1989 and advised her that her status as a nonmember of the Union had no bearing on her decision not to pursue her grievance to arbitration; that the decision was based solely on the Arbitration Committee's recommendation that the grievance lacked merit. Salas wanted her to become a Union member.

8. Under date of January 5, 1990, Dora M. Solorio, 1st Vice-President of the Union wrote Cathy Bogardt, Secretary of the Union. In said letter Solorio charged Crawford with conduct detrimental to the interests of the Union and recommended removing Crawford as a steward.

It was alleged that Employee Fred White on December 11, 1989, asked Crawford to withdraw his grievance against PM,[3/] but Crawford said he need not withdraw them as the Executive Board would vote no further action be taken. This conduct was stated therein to be a violation of the Union's

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1/ Crawford denied that she told this to White.

2/ The attachment also stated that on December 6, 1989, at a stewards meeting, President John Salas urged stewards not to advise grievants they could appeal the Arbitration Committee's decisions, especially nonmembers.

3/ PM refers to a Directorate at McCellan Air Force Base.

Constitution and By-Laws by making known information to persons not entitled to it; that Crawford engaged in misfeasance by making such a statement, and she was insubordinate by failing to comply with White's request to withdraw his grievances.

It was further alleged that Crawford caused Valerie Hobin to file an unfair labor practice charge against the Union; that President Salas, at a stewards meeting in December 1989, urged stewards not to advise grievants (especially non-members) they could appeal an arbitrator's decision; that Crawford was present at the meeting. Solorio also stated Hobin must have known about the Union procedures from Crawford, and that she engaged in misfeasance by making known to Hobin the Union's procedure.

9. Under date of January 19, 1990[4/] Tony Roberts, Chief Executive Steward of the Union, wrote Crawford stating that: (a) charges had been filed against her under Article XVIII, Section 7 of the Union's Constitution and By-Laws; (b) he found merit to the charges and she was suspended as steward as of that date; (c) a committee of her peers (stewards of the same rank) would meet to hear the matter.

10. In a letter dated January 24, Crawford wrote Roberts a letter in which she stated that the 1986 Constitution and By-Laws do not contain Article XVIII, and she requested a copy of any changes made therein. She also requested a reply as to what right of representation she was afforded, as well as a complete package of the charges against her.

11. On January 25 Roberts replied to Crawford and stated the correct Article of the Constitution and By-Laws was Article VIII (pages 23-27); that the document does not address the question of her representation which she must raise to the Peer Committee; that he is only required to give her a copy of the changes, and any further questions should be addressed to the Committee.

12. On February 7 Mike Hamblin, Executive Steward and Chairperson of the Peer Committee wrote Crawford re the scheduled meeting of the Committee concerning the charges against her. Hamblin stated that, apart from gathering data

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4/ Where no year is hereinafter indicated in respect to a stated month and day, it refers to 1990.

in regard to such charges, Crawford would be given an opportunity to present evidence on her behalf.

13. The Peer Committee met on February 28. It comprised Mike Hamblin, Executive Steward and Chairman of the Committee, as well as Division Stewards Joe Harris and Chuck Graham. Hamblin told Crawford, who was present, to state whatever she wished re the charges; that the Committee was present to gather information concerning them. Crawford stated she gave no information to Valerie Hobin;[5/] that she only told Hobin that if she was not satisfied with the Arbitration Committee's decision, she would have to talk to somebody else.

14. The Peer Committee issued its findings and recommendations under date of March 7. It upheld the charges against Crawford made by Solorio on January 5 as to (a) malfeasance as a representative of the Union, (b) insubordination in the performance of her representational duties; (c) making known Union business to persons not entitled to such knowledge by discussing Executive Board business. The Committee did not uphold, in respect to making known Union business, the discussion of member/nonmember privileges. It concluded by finding there was probable cause for the suspension of Crawford.

15. Salas wrote Crawford on March 20 regarding the Committee's findings and attached a copy thereof. He also set forth his decision to remove Crawford as a Union steward based on the recommendations of the Committee, and advised her of the right to appeal his decision to the Executive Board.

16. After an appeal by Crawford to the Executive Board, this body issued its findings and decision[6/] on June 12. They were as follows:

Charge No. 1 - relating to the statement by Crawford to White that he need not "withdraw his grievances because

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5/ Crawford was referring to the comment by Salas wherein he advised stewards not to tell grievants they could appeal the Arbitration Committee's decision. Crawford proceeded on the theory that the Peer Committee assumed she gave this information to Hobin.

6/ G.C. Exhibit 13(b).

the Executive Board would vote that no further action be taken. . ."

The Board concluded this statement was inimical to the Union as a harmful untruth, that Crawford's failure to process White's grievance showed serious neglect as a steward. The Board found "Probable Cause".

Charge No. 2 - relating to Crawford's "Making known . . . or other persons not entitled to know", i.e., nonmembers.

The Board concluded, in connection with White, that since White is a Union member, Crawford did not violate the National Constitution. It found "No Probable Cause".

Charge No. 3 - relating to Crawford's statement to White that the Executive Board would take no further action.

The Board concluded this was not misfeasance. It found "No Probable Cause".

Charge No. 4 - relating to Crawford's failure to comply with White's request to withdraw his grievance as causing Union and the Employer to expend funds.

The Board concluded no funds were expended by the Union. It found "No Probable Cause".

Charge No. 5 - relating to Crawford's making known business of the Union to persons not entitled to such knowledge, and causing Hobin to file an unfair labor practice charge against the Union.

The Board concluded Crawford did violate the National Constitution by letting persons, not entitled, to know the internal union business. It found that the only way Hobin could have made the statements she did in her unfair labor practice charge against the Union was by Crawford telling her. Thus, concluded the Board, Crawford committed misfeasance as a Union representative. It found "Probable Cause".

The Executive Board Committee decided that the removal of Crawford as steward was proper.7/

7/ Article VIII, section 7(d) of the Union's Constitution and By-Laws provides that, with respect to an appeal, the decision of the Executive Board of the Union shall be final. (See G.C. Exh. 12).

17. Cathy Bogardt, secretary of the Union, testified that Charge No. 1 wherein Probable Cause was found, would have been sufficient grounds for Crawford's removal. The record reflects that Bogardt was not aware that any steward had been removed for the same charge (No. 1) as this one made against Crawford.

Conclusions

There are three principal issues for determination in this case: (1) whether the Complaint was barred by the six month statute of limitations set forth in section 7118(a)(4)(A) of the Statute; (2) whether a prima facie case has been established with respect to Respondent's actions concerning the removal of Mary Crawford as a Union steward for her conduct in causing an employee in filing an unfair labor practice charge against Respondent; (3) if so, whether Respondent has shown it would have removed Crawford as a steward, or upheld her removal, in the absence of protected activity.

(1) Respondent contends that the charge, which was filed on December 13, 1990, was untimely filed under the Statute[8/], and bars the issuance of the Complaint herein.

With respect to the charges filed against Crawford by Union official Dora Solorio on January 8, the record reflects that Chief Steward Roberts suspended Crawford as Respondent's steward on January 19. The Complaint alleges that this suspension was due, in part, to the fact that Crawford caused employee Valerie Hobin to file an unfair labor practice charge against Respondent. Based on the Peer Committee's decision of March 7, that there was probable cause for the suspension, Union President Salas notified Crawford on March 20, that he decided to remove her as a Union steward.

Unless otherwise excused, it is clear that the charge filed by Crawford against Respondent on December 13, 1990 was untimely. As such, the Complaint herein, insofar as it

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8/ Section 7118(a)(4)(A) provides that:

> ". . . no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

alleges discriminatory conduct by the Union on January 19, 1990 in suspending Crawford as steward was barred under section 7118(a)(4)(A). The same conclusion must be drawn in respect to the decision by Salas on March 20, 1990, and notification to Crawford on that date, to suspend the latter from her position as Union steward. In both instances the alleged unfair labor practice toward Crawford occurred more than 6 months prior to the filing of the charge, and thus render the Complaint barred in regard thereto.

The Statute does set forth an exception to prohibiting the issuance of complaints so barred. Thus, under some circumstances conduct by an agency or labor organization might alter the 6 month rule. Under section 7118(a)(4)(B) a complaint may issue if a person in prevented from filing a charge during the 6 month period by the agency or union, by reason of "(i) any failure of either the agency or union, against whom the charge is made, to perform a duty owed to the person, or (ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6 month period."9/

There is no evidence herein which would support a finding that Crawford was prevented from filing a charge within 6 months of either January 19 or March 20 by reason of any failure by Respondent to perform its duty to this individual or because of any concealment on its part. Accordingly, I find that Crawford's failure to file her charge until December 13, 1990 - more than 6 months after the initial suspension of her as steward on January 19 and March 20, 1990 precludes the issuance of a complaint based on Respondent's conduct in suspending or removing her as steward on said dates. Accordingly, I find no merit to the allegations re Crawford's removal or suspension as a steward on January 19, 1990 for discriminatory reasons as alleged in the Complaint.

Different considerations apply in regard to the conduct by Respondent's Executive Board in upholding the suspension of Crawford. The record shows that this body issued its decision on June 12, 1990 wherein it decided that the removal of this individual was proper. In order to comply with the 6 month requirement as to this allegation, Crawford

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9/ In such instances, the charge must be filed during the 6 month period beginning on the day of the discovery by the person of the unfair labor practices.

should have filed her unfair labor practice charge by December 12 rather than December 13 unless other factors prevail to change the dates of the limitation period.

An examination of cases in the private sector, is persuasive that such factors are present herein. Thus, it is noted that the National Labor Relations Board[10/] has held that the 6 month limitation period begins to run from the date an employee-member is notified of the action or conduct by a union against the individual. The period does not commence to run from the date the union takes such action if the person is not made aware of it on that date. See American Federation of Musicians; Miami Federation of Musicians, Local 655 (Royal Palm Dinner Theater, Ltd.) et al., 275 NLRB No. 97; Mack Trucks, Inc., 230 NLRB No. 163. I find the holdings in the private sector in this regard to be persuasive in fixing the time when the limitation period should commence to run. In the instant case Crawford was not notified of the Executive Board's action in upholding her suspension until July 15, 1990. Thus, the filing of the charge by Crawford on December 13, 1990 would be within the 6 month limitation period. I therefore conclude that with respect to the conduct by the Executive Board, as set forth in paragraph 7 of the Complaint, the charge was timely filed.

(2) In Letterkenny Army Depot, 35 FLRA 113 the Authority delineated the burden imposed upon the General Counsel in establishing alleged discrimination, including "pretext" and "mixed motive" cases. As indicated therein, it must be shown that an employee, who is the alleged discriminate was engaged in protected activity, and that such activity was a motivating factor in the action taken against him. Once such a prima facie case has been established, it may be demonstrated that the same action would have begun taken against the employee even in the absence of protected activity.

It is alleged herein that Respondent Union suspended, or removed Crawford because she caused employee Hobin to file an unfair labor practice charge against Respondent. In a well articulated decision by Judge Devaney, which was adopted by the Authority in National Association of Government

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10/ The National Labor Relations Act, under section 10(b), contains a similar 6 month limitation period as is found in the Statute herein.

Employees, Local R5-66, 17 FLRA 796, consideration was given to discipline of a member by a union. It was held therein that if a union disciplines a member, whether by expulsion or fine, because he filed, or caused other employees to file, unfair labor practice charges with the Authority, such disciplinary action violated section 7116(b)(1) of the Statute.11/ While the conduct by Respondent involved removal of a member from his position as a union steward rather than expulsion, the same principle should apply. It is the act of penalizing the individual for utilizing the processes of the Authority which interferes with or restrains an employee contrary to section 7116(b)(1). Thus, the removal of a steward falls within the ambit of this statutory prohibition. National Treasury Employees Union and National Treasury Employees Union, Chapter 53, 6 FLRA 218.

While the initial actions by Respondent herein in January and March 1990 may bar the issuance of a complaint in regard thereto, the action taken by the Executive Board which does not bar such issuances, does support a finding that General Counsel has made a prima facie showing of discrimination. The decision of the said Board that the removal of Crawford as a Union steward was proper was based, at least in part, on the charge (No. 5) that she caused employee Hobin to file an unfair labor practice charge against Respondent. This is clearly stated in the Board's decision as a violation of the Union's Constitution and By-Laws.

In an attempt to counter this conclusion, Respondent's brief asserts that the underlying reason for her removal was actually a "breach in the relationship between the steward and the steward's union employer", and not for assisting an employee to file an unfair labor practice charge. A similar contention was made by a union in American Federation of Government Employees, AFL-CIO, 29 FLRA 1359. It insisted the reason the union proposed suspension of an employee-member was not due to his filing charges against the union but rather his disloyal conduct disclosed by such filings.

11/ Section 7116(b) provides that it shall be an unfair labor practice for a labor organization -

(1) to interfere with, restrain or coerce any employee in the exercise by the employee of any rights under this Chapter.

The Authority concluded that, whatever the union's subjective reasons or motivation for including the member's filing charges may have been, they are not controlling. His protected activity formed a basis for the disciplinary action taken against him. In the case at hand it may well be that the Executive Board deemed Crawford's conduct, i.e., causing Hobin to file a charge against the Union, as "misfeasance" or disloyalty. However, the Board's action was based, at least in part, on the fact that she did cause the employee to file an unfair labor practice charge albeit Crawford's conduct is termed "misfeasance". Thus, the Union restrained Crawford in the exercise of a protected activity, which constitutes a prima facie case of discrimination in violation of 7116(b)(1) of the Statute.

(3) As heretofore stated, decisional law recognizes that a respondent may rebut any prima facie showing of discrimination presented by the General Counsel. If it can be established by Respondent herein that the Union would have taken the allegedly unlawful action even in the absence of protected activity, then General Counsel has not established a violation of the Statute.

Respondent argues that even if it be found that Crawford's conduct in regard to Hobin was protected activity and her suspension was wrongful based on such conduct, no violation may be found herein. It is contended that the Executive Board would have removed her, or upheld the removal, based on her failure to process White's request to drop his grievance. (Charge No. 1). In respect thereto, the Board found "Probable Cause". In support of this view, Respondent adverts to the testimony by Cathy Bogardt, Secretary of the Union, that Crawford would have been removed based on this charge involving White.

Upon due consideration I am not persuaded that Respondent has clearly shown that the Executive Board would have come to the same conclusion in the absence of a showing that Crawford caused employee Hobin to file an unfair labor practice charge against the Union. Bogardt testified she would have found probable cause to remove a steward by reason of the incident concerning Crawford's failure to handle White's request as to his grievances. But there is no evidence, nor testimony by the other Board members, that the charges concerning Crawford's conduct toward White and Hobin were mutually exclusive or treated independently so that a vote was rendered to uphold Crawford's removal by either charge. The charges against Crawford were packaged,

and after "Probable Cause" was found as to Charges 1 and 5, the Executive Board concluded:

> This Executive Board Committee's decision is as follows: Review of the record of the charges filed against Mary Crawford as a steward, by Dora Solorio, caused this Committee to decide the removal of Ms. Crawford from her position as a Union Steward was proper. The decision was made by a majority of the Executive Board Committee.

Although it may well be that the Board's Committee would have upheld Crawford's removal in the absence of the charge concerning Hobin's filing of a charge against the Respondent, I conclude that the record falls short of sufficient evidence or proof that such would have occurred. Accordingly, I find that Respondent has not rebutted the prima facie case established by the General Counsel in so far as the action taken by the Union's Executive Board in upholding the removal of Mary Crawford based on her causing employee Valerie Hobin to file an unfair labor practice charge against the Union. Thus, I conclude Respondent violated section 7116(b)(1) of the Statute by reason of the action taken by the Executive Board Committee on September 12, 1990 which was communicated to Mary Crawford on September 15, 1990.

It is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that American Federation of Government Employees, Local 1857, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its members in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute by removing, or upholding the removal, of Mary E. Crawford or any other member, from the position of Union steward for causing other employees to file unfair labor practice charges against the American Federation of Government Employees, Local 1857, AFL-CIO.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise

of rights assured by the Federal Service Labor-Management Relations Statute.

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

(a) Require and direct its Executive Board Committee to rescind its decision, wherein it found Probable Cause for the removal of Mary E. Crawford as a union steward because she caused an employee to file an unfair labor practice charge against the American Federation of Government Employees, Local 1857, AFL-CIO, and advise Mary E. Crawford of such rescission by the Executive Board Committee.

(b) Reconvene its Executive Board Committee and have said Committee reconsider the charges filed against Mary E. Crawford, wherein it found Probable Cause for her removal as a union steward, without regard to and disregarding the charge that Crawford caused an employee to file unfair labor practice against the American Federation of Government Employees, Local 1857, AFL-CIO, and advise Mary E. Crawford of such rescission by the Executive Board Committee.

(c) Post at the business office of the American Federation of Government Employees, Local 1857, AFL-CIO, and in normal meeting places, including all places where notices to members of and unit employees exclusively represented by the American Federation of Government Employees, Local 1857, AFL-CIO are customarily posted, 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 President of the American Federation of Government Employees, Local 1857, AFL-CIO, and 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 insure that such Notices are not altered, defaced, or covered by any other material.

(d) Submit signed copies of said Notice to the Sacramento Air Logistics Center, McClellan Air Force Base, Sacramento, California, for posting in conspicuous places where members of American Federation of Government Employees, Local 1857, AFL-CIO are located, where they shall be maintained for 60 consecutive days from the date of posting.

(e) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the San Francisco Regional Office, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, California 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 17, 1991

William Naimark

WILLIAM NAIMARK
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with, restrain, or coerce our members in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute by removing, or upholding the removal, of Mary E. Crawford or any other member, from the position of Union steward for causing other employees to file unfair labor practice charges against the American Federation of Government Employees, Local 1857, AFL-CIO.

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

WE WILL require and direct our Executive Board Committee to rescind its decision, wherein it found Probable Cause for the removal of Mary E. Crawford as a union steward because she caused an employee to file an unfair labor practice charge against the American Federation of Government Employees, Local 1857, AFL-CIO, and advise Mary E. Crawford of such rescission by the Executive Board Committee.

WE WILL reconvene our Executive Board Committee and have said Committee reconsider the charges filed against Mary E. Crawford, wherein it found Probable Cause for her removal as a union steward, without regard to and disregarding the charge that Crawford caused an employee to file unfair labor practice against the American Federation of Government Employees, Local 1857, AFL-CIO, and advise Mary E. Crawford of such rescission by the Executive Board Committee.

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(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 of the Federal Labor Relations Authority, San Francisco Regional Office, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4117.