

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEFENSE LOGISTICS AGENCY
DEFENSE DISTRIBUTION REGION WEST

STOCKTON, CALIFORNIA
AND
DEFENSE DISTRIBUTION REGION WEST

DEFENSE DISTRIBUTION DEPOT OKLAHOMA

TINKER AIR FORCE BASE, CALIFORNIA

Respondents

and

AMERICAN FEDERATION OF GOVERNMENT

Case No. DA-CA-50226

EMPLOYEES, AFL-CIO, LOCAL 916

Charging Party

Preston L. Mitchell, Esquire For the Respondent

Charlotte A. Dye, Esquire For the General Counsel

Mr. Phil Porter For the Charging Party

Before: WILLIAM B. DEVANEY Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. ⁽¹⁾, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns, quite narrowly and quite specifically, whether the position of secretary to the Chief, Support Division, Defense Distribution Depot Oklahoma is that of a "confidential employee" within the meaning of § 3(a)(13) of the Statute.

This case was initiated by a charge filed on January 9, 1995 (G.C. Exh. 1(a)) alleging violations of §§ 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued on October 31, 1995 (G.C. Exh. 1(c)); alleged violations only of §§ 16(a)(1) and (5); and set the hearing for February 5, 1996, pursuant to which a hearing was duly held on February 5, 1996, in Oklahoma City, Oklahoma, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, March 6, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief received on, or before, March 11, 1996, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. Without going into details, the Decision and Order on Petition for Clarification of Unit⁽²⁾ in Department of Defense, Defense Logistics Agency, Case No. WA-CU-20915, January 11, 1993 (Res. Exh. 15, Attachment), notes that supply depots previously separately maintained by the Army, Navy, Air Force and Marine Corps were transferred to create the single Defense Logistics Agency (DLA).

2. DLA initially established three Regions: Defense Distribution Region West (DDRW); Defense Distribution Region East (DDRE); and Defense Distribution Region Central (DDRC) which included Oklahoma City (i.e., Defense Distribution Depot Oklahoma -- (DDO⁽³⁾) (Res. Exh. 15). In 1993, the Central Region was disbanded and DDO was moved to the Western Region (Tr. 139).

3. DDO is located at, and is a tenant of, Tinker Air Force Base (Tr. 153), and, as a tenant, is subject to the rules and regulations of Tinker Air Force Base (Tr. 154). In the transcript, reference to the "Commander" means the Commander of the Depot (DDO) -- not the Commander of Tinker Air Force Base (Tr. 188).

4. DDO is a subordinate part of Region West (DDRW), which is headquartered in Stockton, California, and Region West is a subordinate part of DLA, headquartered in Washington, D.C. (Res. Exh. 15; Tr. 137, 138, 139). Mr. Dean M. Boswell is Labor Relations Officer for DDRW (Tr. 137).

5. DDO was created in August, 1992, by the transfer of function and employees from the Air Force Logistics Command, Tinker Air Force Base to DLA (Tr. 92, 138). Mr. Bobby Hughes was Chief of Support Division DDO prior to Mr. Bill Watkins, i.e., Mr. Hughes was Chief of Support Division until about November 21, 1993; and was succeeded by Mr. Watkins on November 22, 1993 (Tr. 37).

6. DDO has about 800 employees (Tr. 138); is headed by a Commander and Deputy Commander (Tr. 188); and the Chief of Support Division, Mr. Watkins, is third in line of command and would be in charge of DDO in the absence of both the Commander and Deputy Commander (Tr. 189). Mr. Watkins, as Chief of Support Division is in charge of four Branches: computer systems (computer equipment and computer support) (Tr. 15); administrative support [XA] (budget, payroll, public affairs, training, mail, safety and personnel) (Tr. 15-16); discrepancies [XI] (reports of discrepancy) (Tr. 16); and distribution [XP] (distribution,

transportation, receiving and storing)(Tr. 16). The Support Division, helps the Depot carry out its mission on a daily basis (Tr. 16).

7. Ms. Carmen T. Spiegel had worked at the Tracy Depot and the Sharp Depot in California (Tr. 13), and came to work in Oklahoma on November 1, 1993, as secretary in the Support Division (Tr. 15). Initially, Ms. Spiegel was secretary to Mr. Hughes, who was Chief of the Support Division when she arrived; and on November 22, 1993, three weeks later, Mr. Hughes was succeeded by Mr. Watkins (Tr. 36-37). Ms. Spiegel was Mr. Watkins' secretary from November 22, 1993, until April 17, 1995 (Tr. 15, 37), when she was detailed to Installation Services, where she worked from April, 1995, until August, 1995 (Tr. 14); then to Warehousing, where she worked from August 23, 1995, to September, 1995 (Tr. 14); and since September, 1995, has worked at Customer Assistance (Tr. 13). For paperwork purposes, Ms. Spiegel still occupies the position of Support Division secretary, although as noted, she has been detailed out of that position since April 17, 1995 (Tr. 15, 38). I have considered her testimony, as well as the testimony of all other witnesses, carefully and agree with Respondent that ". . . Ms. Spiegel was not forthcoming in divulging the actual nature of her job duties . . ." (Respondent's Brief, p. 2). Indeed, so pervasive was her purpose to conceal labor-management related activities that she was shown by her own testimony to have been untruthful. For example, she stated that she never typed anything for Mr. Watkins that related to labor-management matters (Tr. 27), but later admits that on August 22, 1995, she typed, "Bargaining Unit Evaluation/Determination" concerning her position as a confidential employee and the position of Ms. Diana Barnaba and Ms. Sherry Smith, as employees engaged in personnel work in other than a purely clerical capacity (Res. Exh. 10; Tr. 46); that she typed Mr. Watkins' memorandum of August 15, 1994 (Res. Exh. 8), concerning negotiations -- incredibly, Ms. Spiegel asserted that even though her initials are shown she did not necessarily type the letter (Tr. 49); that she typed Mr. Watkins' letter of January 25, 1995, to Union President Wallace inviting him, or his designee, to attend scheduled Commander's meetings; Mr. Watkins' letter of January 5, 1995, to Mr. Phillip Porter, Chief Steward (Res. Exh. 11) transmitting information requested by Mr. Porter (Res. Exh. 11, Attachment); and that she typed management's proposal in negotiations concerning a reduction in force (RIF) (Res. Exh. 2; Tr. 40, 41). With respect to the "Most Efficient Organization" -- "MEO", Ms. Spiegel first responded, "I don't know what you are talking about." (Tr. 74); then admitted that she had, ". . . heard of the acronym before" (Tr. 74); admitted she saw MEO on paperwork from DDRW (Tr. 82); and Ms. Donna Libel credibly testified that Ms. Spiegel updated a disc furnished by DDRW to reflect DDO's most efficient organization (Tr. 219-220). Accordingly, where there is any conflict of testimony concerning her duties, the testimony of Messrs. Boswell and Watkins, which I found to be entirely credible, will be credited and that of Ms. Spiegel will not be credited.

In about August or September, 1994, Mr. Watkins began handling grievances and Ms. Spiegel was instructed to start a log book on grievances, which meant that she had to read at least the cover letters to log in each grievance (Tr. 33, 58-59), set up a suspense file, wrote any notations Mr. Watkins told her to make (Tr. 65), sent the grievance to the employee's division (Tr. 33), and followed up to ensure that action was timely taken (Res. Exh. 12).

Ms. Spiegel took telephone messages for Mr. Watkins (Tr. 18) and, despite her denial (Tr. 55), I credit Mr. Boswell's testimony that he did leave messages with Ms. Spiegel concerning labor-management positions of DDO and that if Mr. Watkins could not call back for her, Spiegel, to find out the information and call him (Tr. 159).

Ms. Spiegel typed labor-management related material for Mr. Watkins (Res. Exhs. 2, 8, 10, 11; Tr. 219-220). Ms. Spiegel's assertion that Mr. Watkins never told her she was in a confidential relationship (Tr. 35) is belied by the nature of her duties, but, more important, is contrary to Mr. Watkins' memorandum of August 22, 1994 (Res. Exh. 10), which Ms. Spiegel typed, which requested evaluation of her eligibility to remain in the bargaining unit because, ". . . In this position, she has access to many sensitive documents and information used in the division to formulate policy, or recommend changes to existing DDOO policies and procedures."

Ms. Spiegel has keys to Mr. Watkins' office and files, has responsibility to open the office in Mr. Watkins absence and unlock file cabinets to file material (Tr. 75). She also retrieves documents from Mr. Watkins' office; had access to grievance files, which were in a locked file cabinet in Mr. Watkins' office, because she had to, ". . . get into my files" (Tr. 76) during the day. She also had the responsibility to make certain that the files and Mr. Watkins' office were kept locked (Tr. 75).

Ms. Spiegel opened all mail and logged it in except mail marked "To be opened by the Addressee only" (Tr. 22), maintained suspense files for all correspondence requiring action (Tr. 22, 23).

Ms. Spiegel typed performance appraisals (Tr. 18); in addition to providing typing support for Mr. Watkins (Tr. 27), Ms. Spiegel checked correspondence from branch secretaries to be signed by Mr. Watkins, the Commander or Deputy Commander (Tr. 26); she did typing support for budget, payroll, OSHA reports, contracts, and personnel (Tr. 27).

Ms. Spiegel attended the weekly staff meeting that Mr. Watkins held with his branch chiefs (Tr. 28) and conceded that all sorts of problems were discussed (Tr. 23-31). Ms. Spiegel, in a three-way telephone conversation, was asked by Mr. Boswell about the impending RIF (Tr. 56).

Ms. Spiegel stated that Mr. Porter or Mr. Clayton Stasney came in the office now and then to see Mr. Watkins and, ". . . they would go into the office and close the door or they would go into the commander's conference room and close the door" (Tr. 31); and she knew Mr. Watkins sat in the negotiating meetings with Boswell, Ms. Cathy Brown, Mr. Jim Usher, Mr. Porter, Mr. Stasney, the Commander and Deputy Commander (Tr. 42); and that she typed proposals on the second day of the meeting (Tr. 42; Res. Exh. 2).

From April, 1995, following Ms. Spiegel's detail elsewhere, Ms. Jean Ross, a secretary in Installation Services (Tr. 126), was detailed for four months as secretary to Mr. Watkins, *i.e.*, from April to August, 1995 (Tr. 127). Ms. Ross stated that she typed material on labor-management matters for Mr. Watkins (Tr. 128), including a letter, ". . . to the union on safety-toes boots" (Tr. 129), and material on the RIF which, Mr. Watkins reminded, was confidential (Tr. 130-131); that she logged-in grievances and gave them to Mr. Watkins (Tr. 131); that she suspended them and sent them to where the employee worked (Tr. 131); and that she assumed Mr. Watkins advised higher management on labor-management matters because he got calls from the personnel department in California (Tr. 132).

Mr. Porter conceded he had met with Mr. Watkins informally on labor-management matters (Tr. 96) and had met with him concerning implementation of the supplement negotiated by DDRW, specifically the safety shoe issue (Tr. 96, 97-122). Mr. Porter stated that ". . . I am aware that he [Watkins] has discussed settlement agreements with one of my stewards" (Tr. 105).

8. Mr. Hughes, as Chief Support Division, with respect to negotiations on the Union's Supplemental Agreement proposals, plainly espoused the position of DDO on the Union's proposals (Res. Exh. 1; Tr. 142-143).

Mr. Watkins, as Chief Support Division, advises the Depot Commander on labor relations (Tr. 177, 191); is the focal point for information requests from the gathering of data to Privacy Act determinations (Tr. 176-177); under the Master Labor Agreement, grievances went to the immediate supervisor; then to the Branch or Division Chief; then to the Region Commander (DDRW) (Tr. 153), but under the Supplement, grievances

go to the immediate supervisor; then to the Depot Commander, and then to alternative dispute resolution (Tr. 153). Because grievances now go to the DDO Commander, Mr. Watkins is directly involved in the disposition of grievances (Tr. 191, 209). The Commander gave him the responsibility to devise the MEO for the Depot, a major issue which has been worked and re-worked since 1994 and on which Ms. Spiegel assisted (Tr. 214). Mr. Watkins now meets, or speaks, to the Union on labor-management matters 2-3 times per week (Tr. 217); he frequently communicates with Mr. Boswell and with Mr. Rick Dabel, Labor Relations Officer, by telephone and by fax about labor matters (Tr. 144, 190); and is the Depot contact for DDRW for labor management matters. Mr. Watkins did handle with the Union implementation of the safety shoe matter and met with Messrs. Porter and Stasney, the Commander and Deputy Commander about the RIF and about safety shoes (Res. Exh. 7, Tr. 195, 196, 198). Mr. Watkins negotiated with the Union concerning blood spills and this led to withdrawal of an ULP charge (Res. Exh. 3). Mr. Watkins is the point of contact when labor relations issues involve Tinker Air Force Base -- by way of example: a Health Clinic problem; a parking issue (Tr. 155, 201); and implementation of the smoking policy. DDRW and the Union had a concept of the size and location of smoking huts; but Tinker decreed that all smoking huts on the base must be uniform and meet its designed appearance. Accordingly, Mr. Watkins had to coordinate the matter with all parties and bring to fruition places for employees to smoke (Tr. 200-201). Mr. Watkins prepared, on his own, a partnership agreement which he sent to Mr. Porter under his name (Tr. 180). Mr. Watkins supervises security and EEO for DDO (Tr. 174); and he developed an arrangement with Tinker Air Force Base for the hiring and training of displaced DDO personnel which he had to coordinate with the Union (Tr. 203-204). Mr. Watkins also is a Division Chief and supervises four branches, including the supervisor of each branch.

CONCLUSIONS

The bargaining unit in this case excludes: "All professional employees, management officials, supervisors, and employees described in 5 USC 7112(b) 2, 3, 4, 6, 7." (Res. Exh. 15, Attachment). 5 U.S.C. § 7112(b) provides, in relevant part, as follows:

"(b) . . . nor shall a unit be determined to be appropriate if it includes--

"(1) except as provided under section 7135

(a) (2) of this title⁽⁴⁾, any management official or supervisor;

"(2) a confidential employee;

"(3) an employee engaged in personnel work
in other than a purely clerical capacity;
. . . ." (id.).

Of course, the certification did not name the professional employees, management officials, supervisors, confidential employees, etc., who were excluded.

General Counsel quite succinctly states the issues presented as follows:

". . . The issues presented in this case are whether Watkins, as Chief of the Support Division, formulates or effectuates management policies in the field of labor-management relations, and, if so, whether Spiegel, as Secretary, acts in a confidential capacity to him when he is performing his duties in the field of labor-management relations." (General Counsel's Brief, p. 4).

For reasons fully set forth hereinafter, I conclude that the answer to each issue posed is, "yes"; and, accordingly, that the position of secretary to the Chief of the Support Division is a confidential employee position; and that Respondent did not violate § 16(a)(1) or (5) by informing Ms. Carmen Spiegel that the position was being excluded from the Union's bargaining unit.

1. Chief of Support Division DDO formulates and effectuates management policies in the field of labor-management relations.

As the Authority has stated,

". . . where a union seeks to represent an employee whose

unit status is disputed, the union may file a representation petition and/or ULP charge to resolve the unit status issue. . . ." Food and Drug Administration, Newark District Office, West Orange, New Jersey, 47 FLRA 535, 536 n.2 (1993).

To be sure, an agency acts at its peril in removing an employee from a bargaining unit, because, if wrong it commits an unfair labor practice, Health Care Financing Administration, 16 FLRA 390, 391-392 (1984), but not, of course, if it was right, Department of Health and Human Services, Washington, D.C. and Department of Health and Human Services, Region VII, Kansas City, Missouri, 16 FLRA 586 (1984); The Adjutant General -- Georgia, Georgia National Guard, Department of Defense, Atlanta, Georgia, 2 FLRA 712, 713-714 (1980).

In evaluating the status of an asserted confidential employee, the Authority has stated,

"Section 7103(a)(13) of the Statute defines a 'confidential employee' as an employee 'who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.' An employee is 'confidential' if:

(1) there is evidence of a confidential working relationship between an employee and the employee's supervisor; and (2) the supervisor is significantly involved in labor-management relations. U.S. Army, Mesa, 35 FLRA at 186 (citing Headquarters, 1947th Administrative Support Group, U.S. Air Force, Washington, D.C., 14 FLRA 220, 225 (1984)). See Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Cincinnati

District, Cincinnati, Ohio, 36 FLRA 138, 144-45 (1990);
Department of Transportation, U.S. Coast Guard, 8th Coast
Guard District, New Orleans, Louisiana, 35 FLRA 84, 87-89
(1990); U.S. Department of Housing and Urban Development,
34 FLRA 207, 211-13 (1990); Headquarters, Fort Sam Houston,
Fort Sam Houston, Texas, 5 FLRA 339, 341-43 (1981). An
employee is not 'confidential' in the absence of either of
these requirements. U.S. Army, Mesa, 35 FLRA at 186 (citing
Tick Eradication Program, 15 FLRA at 252; Federal Mediation
and Conciliation Service, 5 FLRA 28, 31 (1981))." U.S.
Department of Interior, Bureau of Reclamation, Yuma Projects
Office, Yuma, Arizona, 37 FLRA 239, 244 (1990) (hereinafter
referred to as "Yuma Projects").

The Authority further noted in Yuma Projects, that,

"We base bargaining unit eligibility determinations
on testimony as to an employee's actual duties at the time
of the hearing rather than on duties that may exist in the
future. HUD, 35 FLRA at 1256-57; VA, Prescott, 29 FLRA at
1315. (Id., at 245).

Defense Distribution Depot Oklahoma (DDO) came into being in August,
1992, by the transfer of function and employees from the Air Force
Logistics Command. While most of the employees transferred perform the
same duties for DDO that they had performed for Air Force Logistics
Command, there were changes of some jobs, of some organizations and
Defense Logistics Agency's practices, policies and configuration are
different (Tr. 138). The position of Chief of Support Division of DDO was
an evolving position in DLA. Initially, DDO was in the Central Region;

but in 1993, the Central Region was disbanded and DDO was moved to the Western Region. Mr. Bobby Hughes was Chief of the Support Division in 1993, and he, on behalf of DDO, responded in detail to Mr. Boswell, DDRW's Chief negotiator, concerning the Union's Supplement Agreement Proposals (Res. Exh. 1, Attachment).

On November 22, 1993, Mr. Bill Watkins succeeded Mr. Hughes as Chief of the Support Division. Mr. Watkins is a Division Chief, supervises four branches, including the supervisor of each branch, and prepares job evaluations for his secretary and for each branch chief, and, as Division Chief, has supervisory responsibility for performance evaluations for all employees of the Support Division.

The involvement of the Chief, Support Division, in the formulation and effectuation of management policies in the field of labor-management relations has expanded and broadened since its inception in 1992; nevertheless, as noted above, Mr. Hughes, in 1993, formulated DDO's policies with respect to the Union's Supplement Agreement Proposals. Mr. Watkins was tasked by the Commander to develop the MEO for the Depot; was directly involved in RIF negotiations (Tr. 196); conducted the negotiations with Tinker Air Force Base for placement of displaced DDO personnel; and coordinated the hiring and training of displaced DDO personnel with the Union. Mr. Boswell is the focal point of labor-management relations for the Region (DDRW) and was the Chief negotiator for the Supplemental Agreement; but Mr. Watkins is the point of contact for DDRW for labor-management matters and communicates almost daily with the Region on labor-management issues. Mr. Watkins is the advisor to the Commander on labor-management matters (Tr. 177). As noted, because grievances now go from the immediate supervisor to the Depot Commander, rather than to the Region Commander, Mr. Watkins' role as advisor to the Commander has greatly expanded his role in the disposition of all DDO grievances. Mr. Watkins was the DDO representative in negotiations with the Union on RIF; he handled the labor relations issues involving Tinker Air Force, including a health clinic matter and a parking issue in negotiations. Mr. Watkins has been responsible for effectuation of management policy in the implementation of matters such as: Safety Shoes, which has involved repeated meetings with the Union; smoking policies, which involved coordination with Tinker Air Force Base and the Union concerning smoking huts. Mr. Watkins has negotiated with the Union concerning the settlement of grievances; an Unfair Labor Practice charge concerning cleaning of blood spills (Res. Exh. 3) was forwarded to Mr. Watkins and he negotiated a resolution with the Union which resulted in the withdrawal of the charge. Mr. Watkins handles for DDO Union information requests; and Mr. Watkins, on his own, prepared and submitted to the Union a partnership agreement. Mr. Watkins has given written counseling to employees; and he now meets or speaks to the Union on labor-management matters two to three times per week.

General Counsel states, for example, "Watkins testified that he has not been involved in any arbitration case nor has he been directly involved in any unfair labor practice charge" (General Counsel's Brief, p. 5). While true, this totally misrepresents the extent of Mr. Watkins' involvement. It is Mr. Watkins who is contacted by the Region to gather the facts concerning grievances; and it is Mr. Watkins who advises the Commander on the disposition of grievances. Mr. Watkins does negotiate with the Union on settlement of grievances. In like manner, unfair labor practice charges are forwarded to Mr. Watkins and he has negotiated settlements with the Union. General Counsel also asserts that ". . . coordination with the Union over the implementation of the supplemental agreement provision related to safety shoes" fails to show that he formulated or effectuated management policy. Such assertion is wholly unrealistic. As General Counsel well knows, negotiation of impact and implementation issues involves both the formulation and effectuation of management policy and the safety shoe negotiations by Mr. Watkins plainly involved myriad management policy issues ranging from release of employees for measurement -- time, number, place, duration -- to special lasts, either because a shoe size is too small or too big, as well as such other matters as protection from inclement weather, etc. Having considered these and General Counsel's other contentions, I conclude, for reasons set forth above, that Mr. Watkins does formulate and effectuate management relations as an essential part of his duties.

2. The secretary to the Chief of Support Division DDO is a confidential employee

For reasons set forth above, the record shows that Mr. Watkins is significantly involved in labor-management relations. The record also shows that a confidential working relationship existed between Ms. Carmen Spiegel and Mr. Watkins. From her testimony, it would appear that Ms. Spiegel's principle complaint was that she had not been "anointed" and designated "confidential" by Mr. Watkins (Tr. 35); but the Authority in Yuma Projects, supra, cautioned that, "Bargaining unit eligibility determinations are not based on . . . written position descriptions or testimony as to what duties . . . would be performed" but, rather, bargaining unit determination are based on, ". . . testimony as to an employee's actual duties at the time of the hearing" (37 FLRA at 245).

The record, inter alia, shows that Ms. Spiegel typed performance appraisals and employee counseling; she picked up all mail for the Division, opened all mail, except that marked "personal" or "addressee only", logged it in and distributed the mail; did typing support for Mr. Watkins; answered the telephone and, as I have found, contrary to her denial, took messages from Mr. Boswell about various labor-management

matters including questions concerning DDO's disagreement with Union proposals, with specific instructions to find out the information and call back if Mr. Watkins were not able to call. Ms. Spiegel up-dated a disc furnished by DDRW to reflect DDO's Most Efficient Organization, which Mr. Watkins had developed, and she saw MEO paperwork; she typed bargaining proposals for Mr. Boswell at the direction of Mr. Watkins; she joined in a three-way telephone conversation with Messrs. Watkins and Boswell in which she acted as a "sounding board" for Respondent's RIF proposals; she set up a log book for grievances in DDO, set a suspense schedule to insure timely action, distributed the grievances to designated supervisors, made notes in grievance files as Mr. Watkins directed, and followed up with supervisors to whom grievance material had been forwarded. She read all grievances at least to the extent necessary to log them in and set a suspense schedule; she receives materials from supervisors, which would include action on grievances, and places material in grievance files in Mr. Watkins' office. She attended the weekly staff meetings held by Mr. Watkins with the branch chiefs, and conceded that all sorts of problems were discussed including smoking policy.

While mere access to labor relations materials is not enough to establish confidential capacity, Red River Army Depot, Texarkana, Texas, 2 FLRA 658, 661 (1980), Ms. Spiegel had an integral relationship with Mr. Watkins; she was involved in the handling and processing of labor-management data and information for Mr. Watkins; she had access to grievance files and other labor-management files which were kept in a locked file cabinet in Mr. Watkins' office; she filed material in those files (indeed she referred to them as "my files"); she had the responsibility to make certain that the files, and Mr. Watkins' office, were kept locked. She checked correspondence from branch secretaries to be signed by Mr. Watkins, the Commander or Deputy Commander. In U.S. Department of Labor, 33 FLRA 265, 267-268 (1988), the Authority rejected a Union's argument that a limited amount of actual confidential labor relations work does not provide a substantial basis for excluding employees from a bargaining unit; and, in U.S. Department of Labor, Office of the Solicitor, Arlington Field Office, 37 FLRA 1371 (1990), the Authority stated, in pertinent part, as follows:

"We reject any shorthand approach, such as the de minimis doctrine, for determining the bargaining unit eligibility of confidential employees. Rather, a complete examination of all the relevant factors must be made to determine the nature of an employee's confidential working

relationship. . .

"We have decided to apply the Pullman Standard doctrine, as set forth in Hendricks County, 454 U.S. at 189, to circumstances such as those in the present case. Thus, we believe that the definition of confidential employee under the Statute includes employees who, in the normal performance of their duties, may obtain advance information of management's position with regard to contract negotiations, the disposition of grievances, and other labor relations matters. In our view, management should not be faced with having bargaining unit members in positions where they could divulge information that they obtained as part of their confidential internal labor relations duties." (at 1382-1383)

Ms. Spiegel was secretary to a policy formulator, she screens his correspondence and attends management meetings, which, alone would constitute her confidential capacity, U.S. Army Communications Systems Agency, Fort Monmouth, New Jersey, 4 FLRA 627, 636-637 (1980); Department of the Treasury, Internal Revenue Service, Portsmouth District Office, Portsmouth, New Hampshire, 13 FLRA 388, 389 (1983); Federal Mediation and Conciliation Service, 5 FLRA 28, 30-31 (1981); but her involvement in labor-management relations matters was much broader. In addition, she entered onto a computer disc DDO's MEO; typed management bargaining proposals; set up grievance files for DDO grievances, logged each grievance in, suspended it, followed up with supervisors, received and filed information in grievance files; received telephone messages for her supervisor concerning labor-management matters; etc. In short, Ms. Spiegel was a confidential employee within the meaning of the Statute. Internal Revenue Service, Springfield District, Springfield, Illinois, 41 FLRA 376, 379-380 (1991).

Moreover, following Ms. Spiegel's detail elsewhere on April 17, 1995, Mr. Watkins' involvement in labor-management relations has greatly expanded. From April to August, 1995, Ms. Jean Ross was detailed for four

months as secretary to Mr. Watkins and she stated that she typed material on labor-management matters for Mr. Watkins, concerning, "safety-toes boots" and the RIF which Mr. Watkins reminded was confidential; that she logged in grievances, suspended them and sent them to the supervisor involved; and that Mr. Watkins got calls from the personnel department in California. Since September, 1995, to the date of the hearing, Mr. Watkins has not had an assigned secretary (Tr. 208) but has used the Commander's secretary. Finally, while not determinative, it is significant to note that, at each Depot in the Western Region which has a position comparable to Mr. Watkins', the secretary is excluded from the bargaining unit (Tr. 161-162).

Accordingly, I find that Ms. Spiegel, and/or the position of secretary to the Chief, Support Division DDO, is a confidential employee within the meaning of the Statute and, therefore, Respondent's notification of Ms. Spiegel on December 14, 1994, that the position was that of a confidential employee and excluded from the bargaining unit was not in violation of § 16(a)(1) or (5) of the Statute.

Having found that Respondent did not violate § 16(a)(1) or (5) of the Statute, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. DA-CA-50226 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: April 30, 1996

Washington, DC

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7103(a)(13) will be referred to, simply, as "§ 3(a)(13)".
2. With respect to exclusions from the single, nation-wide bargaining unit for all DLA employees represented by the American Federation of Government Employees, the decision states, simply, "EXCLUDED: All professional employees, management officials, supervisors, and employees described in 5 USC 7112(B) 2, 3, 4, 6, 7." (Res. Exh. 15, Attachment) 5 U.S.C. § 7112(b) provides, as relevant,

"(b) . . . nor shall a unit be determined to be appropriate if it includes--

. . .

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

. . . ."

(5 U.S.C. § 7112(B), (2) and (3)).

3. Respondent also refers to Defense Distribution Depot Oklahoma as: "DDOO". Following the practice of using the initial first letters, Defense Distribution Depot Oklahoma should have been "DDDO". Why one "D" was dropped and a second "O" was added was not made clear. Because "DDOO" is awkward, I have shortened the acronym to "DDO".

4.5 U.S.C. § 7135(a) (2) provides as follows:

"(a) Nothing contained in this chapter shall preclude--

. . .

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter."