Office of Administrative Law Judges

WASHINGTON, D.C.

U.S. DEPARTMENT OF THE AIR FORCE, 437TH AIRLIFT WING, AIR MOBILITY COMMAND, CHARLESTON AFB, SOUTH CAROLINA
Respondent

and Case Nos. AT-CA-80109

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1869 AT-CA-90221[1]
Charging Party

Brent S. Hudspeth, Esq. Adam Chandler, Esq. For the General Counsel
Phillip G. Tidmore, Esq. Major Douglas C. Huff, Esq. For the Respondent
Ms. Brenda Stallard For the Charging Party
Before: JESSE ETELSON Administrative Law Judge

DECISION

That part of the consolidated complaint that arises from Case No. AT-CA-80109 alleges that the Respondent committed two unfair labor practices. It alleges that, by issuing a letter of reprimand to employee Gail White based on her activities as a union steward, particularly her giving advice to another employee regarding an alleged child abuse incident witnessed by a third employee, the Respondent violated sections 7116(a)(1) and (2) of the Federal Service Labor-Management Relations Statute (the Statute). The complaint also alleges that the Respondent committed an independent violation of section 7116(a)(1) of the Statute when a supervisor or management official telephoned White in order to determine if anyone had reported a child abuse incident to her. Respondent's answer denies that White was acting in her capacity as union steward when she spoke to her fellow employee regarding the alleged child abuse incident and denies that Respondent committed the alleged unfair labor practices.

A hearing on the complaint was held on November 18 and 19, 1999, in Moncks Corner, South Carolina. Counsel for the General Counsel and for Respondent filed posthearing briefs.

Findings of Fact

The material facts necessary to resolve this case are virtually undisputed. The testimony of each witness with respect to such facts was uncontroverted and appears to have been truthful. Minor differences, which I find to be inconsequential, are incorporated into the narrative below. These findings are based on the record as a whole, but particularly on the testimony and the documents on which the parties have relied in their briefs and arguments.

A. Organizational and Background Facts

The Respondent, an "activity" of an "agency" within the meaning of section 7103(a)(3) of the Statute, operates a Child Development Center (CDC) that provides day care for younger children. Gail White was employed at the CDC and was an officer and steward of the Charging Party (the Union). White's supervisor, Kristina Rose, is the person who issued the letter of reprimand that is in issue here. White's third-level supervisor, Darrie ("Debbie") Ross, is the Director of the CDC and the person who telephoned White asking about her knowledge of a reported incident of child abuse.

Child care workers in a federally operated facility are among the "covered professionals" who, under 42 U.S.C. § 13031, are required, as soon as possible on learning of facts that give reason to suspect that a child has suffered an incident of child abuse, to report the suspected abuse to a designated agency. The agency designated for this purpose at Respondent's CDC is an organization referred to in the record as Family Advocacy. Failure to make a timely report as required by 42 U.S.C. § 13031 is a Class B misdemeanor. 18 U.S.C. § 2258.

CDC's child care workers receive appropriate annual training which includes the requirements for reporting incidents of child abuse and the consequences of failing in this responsibility. The importance of these requirements is given due emphasis at the Respondent and throughout the Air Force. It is the practice at CDC, among other facilities, to remove an employee suspected of child abuse from the facility immediately and place her on administrative leave pending investigation of the incident.

B. White's Receipt of Information About a Report of Child Abuse

On the evening of October 13, 1997, Mary Skelton, a CDC employee, phoned her friend and colleague, Vickie Heller, another CDC employee. In the course of their conversation, Skelton told Heller that she had seen a CDC teacher grab a child, whom she could not identify, by his or her shirt-front and yank the child toward her.

Heller asked Skelton whether she had reported the incident to management. Skelton told Heller that she had not, and expressed some reluctance to do so because she thought the teacher who was involved had a special rapport with the CDC Director. Heller told Skelton that she had to report the incident, and that if Skelton did not, Heller would. This response seemed to Heller to have upset Skelton, who just said okay. Their conversation ended very quickly after that.

Heller's near-contemporaneous statement gives the date of the observed incident, as reported to her by Skelton, as October 10. Skelton had, meanwhile, reported the incident orally to Kristina Rose, and in a written statement, as having occurred on October 8.

On the morning of October 14, the day after her conversation with Skelton, Heller saw White, then in a classroom with children. Heller told White, at that time, only that she needed to talk with her about a Union issue. Sometime during the noon hour that day, Heller returned to the classroom where White was then sitting while the children had their nap. Heller told White that she wanted to talk to her as the "Union person" rather than as an employee. White told her that was not a problem.

Heller then told White about her conversation with Skelton, adding that she (Heller) did not feel comfortable going to management because of having been "written up" before and because she had not seen the incident herself. Her statement about having been "written up" apparently referred to a counseling she had received the previous month for gossiping that was somehow linked to the same employee whom Skelton had identified as having abused the child (Tr. 21). Heller asked White what her rights were concerning Skelton's report.

White was unable to give Heller a complete answer about her rights or responsibilities concerning a situation of this kind, but did tell her that she should tell Skelton to report the incident. White also told Heller either that if Heller did not give Skelton those instructions (Tr. 26), or that if Skelton did not make a report (Tr. 84), that White would report it herself. Heller told White that she would talk to Skelton later that day.

C. The Information is Pursued and Investigated

Heller saw Skelton a short while later and told her about her conversation with White, including White's advice. Skelton indicated to Heller that she would follow that advice. At approximately 4:50 that afternoon, she reported the incident to Kristina Rose. Skelton told Rose that she had told a co-worker about the incident, in confidence, and that the co-worker had told Gail White.(2) Rose notified Director Ross and asked Skelton to make a written statement about the incident.

Ross interviewed Skelton almost immediately, in the presence of Assistant Director Feleen Haynie. Skelton described the incident to Ross, still without being able to identify the child. In a contemporaneous written statement, Ross wrote that Skelton identified the co-worker to whom she had reported the incident in confidence as Lilia Bohorquez. Bohorquez had been present when Skelton saw whatever it was that she saw but had not seen it herself. Skelton, in the written statement she gave Ross, describes informing Bohorquez of the incident immediately after she saw it. At the hearing, Ross testified on direct examination that Skelton, when asked by Ross, had identified Heller as the co-worker whom she had informed about the incident. Later, on cross-examination, Ross confirmed that Skelton had told her that she had also spoken to Bohorquez about it.

When Ross finished questioning Skelton, she phoned White at home while Assistant Director Haynie called or summoned Heller and questioned her about her knowledge of the incident. Ross asked White whether anyone had made a child abuse report to her. White asked Ross what had happened since White had left the facility (Tr. 182) or why Ross was asking (Tr. 85).

Ross told White that there had been an allegation of child abuse and asked her again whether she had been given such a report. White then told Ross that she had received such a report. Ross asked her who had reported it to her and White responded that it was Vickie Heller. White also told Ross that Heller had received the report from Mary Skelton. Ross, Kristina Rose, or both, instructed White to make a written report (Tr. 88, 182). White did so and gave it to Rose on October 15.

Ross and Haynie also interviewed Lilia Bohorquez. Bohorquez denied any knowledge of the alleged incident or that Skelton had told her anything about it, and repeated this denial in a written statement on October 14. At some time, apparently also on October 14, Ross contacted the employee who allegedly abused

the child, who was at home, and told her she could not return to the CDC until Family Advocacy advised them that she could return (Tr. 184).

On October 15, Vickie Heller made her written statement. She wrote that on the day following her conversation with Skelton, "I consulted my union steward Gail White as to what I should do since I had not observed the incident personally. She advised me that the worker who observed the incident should report it and if she didn't I should."

Ross called Family Advocacy that evening. The next morning, October 15, she hand-carried and delivered to them a package containing her interview notes and the employee statements. Later the same day, Family Advocacy informed Ross that the investigation would not proceed any further because (1) the report was untimely and (2) the child could not be identified. A Family Advocacy official informed CDC that he had serious concerns about the staff's understanding of their responsibility to make timely reports. Accordingly, he scheduled additional training for the staff. On advice of Family Advocacy, the accused employee was notified on October 15 that she could return to work.

D. Some Employees were Disciplined

On October 20, 1997, Kristina Rose held a meeting with Gail White at which Rose informed her of possible disciplinary action. White was given the opportunity of making an oral response at that meeting. There is no evidence in the record of what White said at that meeting.

On November 7, Mary Skelton received a notice of "Termination of Employment" for failing to "report a case of suspected child abuse immediately upon witnessing it." On November 12, Vickie Heller received a "Notice of Proposed Suspension for five calendar days for failing immediately "to report what [Skelton] had told you." This proposed suspension became a final decision and was implemented.

Also on November 12, White received a "Memorandum of Reprimand." It was to be placed in her Official Personnel Folder for a period of two years and could affect the extent of future disciplinary action, including removal. The memorandum, issued by Rose, refers to their October 20 meeting and Rose's consideration of the (undisclosed) response White made at that time. The basis for the reprimand was that:

> On 14 October 1997 Vickie Heller reported to you that Mary Skelton had witnessed an employee inappropriately mishandling a child on 8 October 1997. Ms. Heller told you that the incident had not been reported. You told Ms. Heller to tell Ms. Skelton that she should report the incident. However, you made no attempt to report what you had been told, nor did you follow up to insure that Ms. Skelton or Ms. Heller had indeed reported the incident. You completed your shift and left the Center. When you left the Center Ms. Heller nor Ms.

> Skelton had reported the incident. By not reporting the alleged abuse you allowed someone who was suspected of abuse to continue to be in direct contact with children.

Although Kristina Rose issued the disciplinary memoranda to Heller and White, Director Ross had previously discussed the matter of their discipline with Rose.

The employee whom Skelton had accused with respect to the incident was not disciplined. Neither was Lilia Bohorquez. According to Ross, Bohorquez was not disciplined because she denied any knowledge, so that Ross, unable to ascertain whether she was telling the truth, simply forwarded her statement to Family Advocacy (Tr. 194-95, 200-03).

Analysis and Conclusions

A. Alleged Section 7116(a)(1) Questioning

A union representative cannot be compelled to divulge confidential information given to the representative by a unit employee unless the agency establishes an "extraordinary need" for the information. *Federal Bureau of Prisons, Office of Internal Affairs, Washington, D.C.*, 53 FLRA 1500, 1509 (1998). (*Bureau of Prisons*). A conversation in which such information was given is protected activity, and interference with its confidentiality violates section 7116(a)(1). *U.S. Department of the Treasury, Customs Service, Washington, D.C.*, 38 FLRA 1300, 1308-09 (1991) (*Customs Service*).

However, interference, restraint or coercion within the meaning of section 7116(a)(1) occurs only when, under all the circumstances, the conduct that was directed at an employee tends to coerce or intimidate the employee, or when the employee could reasonably have drawn a coercive inference from it. *Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah*, 35 FLRA 891, 895 (1990) (*OALC*). Moreover, section 7116(a)(1) proscribes only coercion "of any employee in the exercise by the employee of any right under this chapter." Even when the employee who is coerced has engaged in protected activity, the coercion must have been with respect to such past, present, or future activity. The question, then, is whether the allegedly coercive action was directed at protected activity or whether, even if the activity at which it was directed occurred contemporaneously with protected activity and was somehow associated with it, the focus was on matters in which management had a legitimate interest and not on the protected activity itself. *See Bureau of Prisons* at 1509-13, 1530-34.

I find instructive in this regard the following passage from the decision of the Administrative Law Judge in *Armored Transfer Service Inc.*, 287 NLRB 1244, 1250 (1988) (this finding not excepted to before the Board):

> There can be little doubt that the pointing of a shotgun at strikers can have a chilling effect on protected activity. It is also true that proof of coercive intent is not needed and that conduct is unlawful as long as it may reasonably be found to interfere with the free exercise

> of employee rights under the Act. (Citation omitted.) However, there must be some nexus between the conduct and the protected activity beyond mere coincidence. A person may be held responsible for unintended consequences of his lawful act, but only where those consequences are reasonably foreseeable. [The employer] was trying to protect himself from a possible robbery under circumstances where he had no knowledge and indeed no reason to believe that there was a labor dispute. Under those circumstances, I do not believe that his conduct constituted a violation of the Act . . . .

Furthermore, the Supreme Court, in a leading case on the issue of employer motivation in cases of interference with the exercise of employee rights to engage in protected activity, appears to have made part of the requisite showing the fact that the employer knew that the employee was engaging in protected activity at the time the incident resulting in discipline occurred. Although the case arose in a somewhat different context (as the excerpt below will show), and although the decision has been subject to different interpretations over the years, I find it, too, to be instructive and worthy of being reckoned with:

> Section 7 grants employees, *inter alia*, "the right to self-organization, to form, join, or assist labor organizations." Defeat of those rights by employer action does not necessarily depend on the existence of an anti-union bias. Over and again the Board has ruled that § 8(a)(1) is violated if an employee is discharged for misconduct arising out of a protected activity, despite the employer's good faith, when it is shown that the misconduct never occurred. (Citations omitted.) In sum, § 8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct.

NLRB v. Burnup and Sims, Inc., 379 U.S. 21, 22-23 (1964).

The difficulty with the attempt to show section 7116(a)(1) coercion in the instant case is that the record reveals no broach of the subject of White's representative status, with respect to the information she received from Heller, in the course of the questions Ross directed to White. When Ross asked White whether anyone had made a child abuse report to her, White hesitated and appeared reluctant to answer. However, there is no evidence that she gave Ross any indication that the reason for her reluctance was that she had received the information in her union capacity. Ross, had she been so informed, would have had the opportunity to frame

any further questions so as to avoid interfering with the confidential relationship. In fact, White could have informed Ross at any time during the conversation that her questions threatened to compromise the confidentiality with which she believed the information to be encumbered. What Ross might properly have done in that event is not to be adjudicated here.

Nor do I believe that the fact that White was a union steward, and that Ross knew that she was, is sufficient to have put Ross on notice that the matter about which she was inquiring was one in which White's reputed involvement was in her representative capacity. White became a steward in 1994 and the Union's Fifth Vice President in 1995. Her activities in those roles were, basically, the filing of grievances for four named CDC employees, perhaps the advising of other employees, and participation in some negotiations and a partnership council, although it is not clear which of these activities preceded the October 1997 events underlying this case (Tr. 82-83, 112-13). Although she negotiated with Ross about a local CDC matter on at least one occasion, which may or may not have preceded October 1997, the record does not make White out to be so prominent a union official as to have required Ross to assume that White had been informed of the incident in her union capacity. In these circumstances, it was reasonable for Ross to rely on White to tell her if she had. I conclude that the questions Ross asked White did not constitute interference, restraint, or coercion within the meaning of section 7116(a)(1).

B. White's Memorandum of Reprimand

1. The Confidential Nature of the Communication, as it was Known to Respondent

By the time it disciplined White, Respondent was on notice that the source of White's third-hand knowledge of the alleged incident was a communication she had received from a constituent who had consulted her as a union representative. Heller had so informed Respondent in her October 15 written statement and, although there was no testimony about it one way or another, it seems more likely than not that she gave Assistant Director Haynie the same information she later put into her written statement, when Haynie spoke with her on the evening of October 14.

Respondent had no reason to doubt Heller on this point. In fact, Respondent, in all other aspects of its response to this incident, accepted and relied on the explanations of the employees it had questioned about their actions. It relieved Ms. Bohorquez of any responsibility, based on nothing more than her denial that she knew anything about the incident, notwithstanding that her statement was in conflict with Skelton's. Bohorquez's offense, if Skelton were to be believed, would have been of much greater consequence than Heller's, or than White's purported offense, since Bohorquez, if her denial was false, could have reported the incident at a time when her information would have been crucial to the investigation and have avoided the delay that Family Advocacy and Director Ross had found so disturbing. While I am in no position to determine whether it was Skelton or Bororquez who was telling the truth, I find it implausible that Respondent would have pursued that potential offense no further, based on Bohorquez's self-exculpation, and, at the same time, have failed to rely on Heller's statement explaining her contact with White.

Nothing in the record indicates that Respondent doubted Heller. It argues, however, that White must be deemed to have been in the status of a child care worker and not that of a union representative when Heller spoke to her because White had not filled out the necessary form to perform union representational duties at the time, and had not requested official time from her supervisor. If there is a logic to this argument, it is a

hollow logic that is remote from everyday reality. I reject it without further elaboration, confident that the intelligent reader will not require any.

Respondent would also have it that the communication between Heller and White cannot be considered confidential because there was no disciplinary proceeding in progress at the time of the communication. The Authority has never placed such a condition on finding that a communication between an employee and her union representative was confidential. *See U.S. Department of Justice, Washington, D.C. and U.S. Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota and Office of Inspector General, Washington, D.C. and Office of Professional Responsibility, Washington, D.C.*, 46 FLRA 1526, 1528, 1570-71 (1993), *reversed and remanded on other grounds*, 39 F.3d 361 (D.C. Cir. 1994)(DOJ). Here, it is apparent at least that Heller regarded her communication as confidential.

2. Application of the Communication's Privilege

Respondent cites court decisions for the proposition that, in order for a privilege to exist under Rule 501 of the Federal Rules of Evidence, four criteria must be satisfied, the final criterion being that the injury that would inure to the confidential relationship by disclosure must plainly outweigh the important societal interest in obtaining all evidence necessary to ensure the correct disposal of litigation. *See, for example, In Re Grand Jury Subpoenas Dated January 20, 1998*, 995 F.Supp. 332 (E.D.N.Y. 1998). This proposition was designed to govern the development or recognition of new rules of privilege under the principles of common law. *Id.* at 334. Its applicability in the present context is not self-evident. Meanwhile, the Authority having in effect established an employee-union representative privilege in *Customs Service* and its progeny, arguments against its very existence must be directed to it.

If there was a privilege, Respondent argues, White waived it by failing to assert it when Ross questioned her on October 14. I find the question of waiver during White's conversation with Ross to be irrelevant to the issue of the lawfulness of her reprimand. The reprimand was based on her failure to report the information she received from Heller immediately on receiving it. A later "waiver" cannot have affected whatever duty she had to report the information at the time Respondent contends she should have done so. Moreover, one must be clear about: (1) what one means by saying that the privilege was waived, especially when the alleged waiver was accomplished by someone other than person on whose behalf the privilege primarily exists; and (2) about the purposes for which it is supposed to have been waived.

Respondent seeks two additional escape routes from the requirement to honor the confidentiality of the communication in question. One is by way of the Authority's "extraordinary need" exception. The other is in the nature of a public policy exception that, Respondent contends, should exempt this information from the requirements of the Statute.

With respect to "extraordinary need," Respondent notes that such a need was found to have been established in *Bureau of Prisons*, but shows no similarity between that case and this except for the fact that in each there was an investigation into the possibility of violence. In *Bureau of Prisons*, the relevant issue was whether the agency had shown that it had a need to conduct an investigation into an alleged threat of violence. 53 FLRA at 1510. The Authority concluded that an "extraordinary need" existed in the specific context presented, including the fact that "no confidential employee- union communication was implicated." *Id.* at n.7.

In the instant case, there is no dispute over the need for an investigation. A showing of "extraordinary need," however, would require a basis from which to conclude that the investigation could not have proceeded, or at least would have been seriously compromised, in the absence of the information to be derived from the confidential communication. Since Respondent had already interviewed the purported witness to child abuse and was contemporaneously interviewing the person to whom the witness had reported the incident, it is difficult to credit the need to follow the trail of reports, to persons further removed from the source, as being "extraordinary." Absent any plausible indication that White knew anything about the incident that neither Skelton nor Heller had revealed, the term "extraordinary need" hardly fits here.

The public policy exception that Respondent advocates here appears to be based on (1) White's duty, under 42 U.S.C. § 13031, to report any suspected child abuse as soon as possible, about which duty she knew or should have known as a result of the training she received and (2) the proposition that the privilege "may be good as against management . . . but it is not good against the world," *DOJ*, 39 F.3d at 369.

With respect to White's purported duty under 42 U.S.C. § 13031, Respondent has provided no basis for concluding that Congress intended to have such reporting requirements override the requirements of the Statute as interpreted by the Authority. Such an exception to the privilege would, if applied here, leave nothing about which Heller could have consulted White in confidence concerning this matter. Nor does Respondent's inability to enforce the requirements of 42 U.S.C. § 13031 by direct disciplinary action enable employees to ignore those requirements with impunity. Violation of that provision is, as noted above, a Class B misdemeanor.(3) Successful prosecution for such a crime might also affect the defendant's employment status.

The argument that the privilege may be good as against management but not "against the world" appears to be little more than another form of the contention, treated above, that the privilege cannot exist unless it meets the criteria for recognizing new privileges for litigation purposes. The short answer is that the privilege is not being asserted here "against the world," but against management, as the discipline imposed on White was for her failure to inform management.(4)

Respondent interfered with employees' exercise of their right to communicate with their union representatives in confidence by disciplining White for failing to reveal that communication in a manner deemed timely by Respondent. Such interference violated section 7116(a)(1) of the Statute and calls for rescission of the discipline.

Remedies for unfair labor practices under the Statute should be designed to recreate the conditions that would have been there had there been no unfair labor practices, *United States Department of Justice, Bureau of Prisons, Safford, Arizona*, 35 FLRA 431, 444-45 (1990). Accordingly, the Authority, may provide affirmative relief with respect to a section 7116(a)(1) violation and "has required an agency found to have committed a section 7116(a)(1) violation to make employees whole for any losses suffered as a result of the agency's illegal actions." *U.S. Department of Health and Human Services, Food and Drug Administration, Pacific Region and National Treasury Employees Union, Chapter 212*, 55 FLRA 331, 337 n.13 (1997).

The remedy would be essentially the same if this action were held also to have violated section 7116(a)(2). *See U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, D.C.*, 55 FLRA 875 (1999). I therefore find it unnecessary to decide whether the discipline also violated section 7116(a)(2). *See*

NLRB v. Burnup and Sims, Inc., supra.[(5)] Accordingly, I recommend that the Authority issue the following order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the U.S. Department of the Air Force. 437th Mobility Command, Charleston, Air Force Base, South Carolina, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing bargaining unit employees by disciplining Gail White or any representative of American Federation of Government Employees, Local 1869 for protected conduct engaged in while performing union representational duties.

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

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

(a) Rescind the memorandum of reprimand given to Gail White and expunge from its files all records of and references to this reprimand.

(b) Post at its facilities 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 Commanding Officer of the 437th Air Mobility Command and shall be posted and maintained for 60 consecutive days there-after in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Regulations, notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., January 28, 2000.

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JESSE ETELSON

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of the Air Force, 437th Airlift Wing, Air Mobility Command, Charleston Air Force Base, South Carolina, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify employees that:

WE WILL NOT interfere with, restrain, or coerce employees by disciplining Gail White or any representative of American Federation of Government Employees, Local 1869, for protected conduct engaged in while performing union representational duties.

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

WE WILL rescind the memorandum of reprimand given to Gail White and expunge from our files all records of and references to this reprimand.

_____ *(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 with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: (404) 331-5212.

1. Case Nos. AT-CA-80109 and AT-CA-90221 were consolidated at the complaint stage of this proceeding and remained so when the matter went to hearing. During the hearing, Counsel for the General Counsel, with my approval, withdrew the complaint allegations arising from Case No. AT-CA-90221. The remainder of this decision relates only to Case No. AT-CA-80109.

2. Rose testified that Skelton identified Vickie Heller as the co-worker she had informed (Tr. 160). However, it is not clear that Rose intended to say that Skelton identified Heller during their October 14 conversation. Nor, based on the written statements of Rose, Skelton, and Ross, is it clear that it was Skelton from whom Rose received this information.

3. A defendant who is found guilty of a Class B misdemeanor may be imprisoned for up to six months and fined up to $5,000, more if death has resulted. 18 U.S.C. §§ 3581(b) and 3571(b).

4. Although 42 U.S.C. § 13031 would have required any report of child abuse by CDC employees to have been made to Family Advocacy, there is no indication in the record that the employees were so trained. Rather, their instructions were to report such incidents to their supervisors (Tr. 88-89, 157). In any event, Family Advocacy is an organizational component connected to the Respondent (Tr. 183), not a law enforcement agency or an investigator for a litigant.

5. Analysis of whether Respondent committed the section 7116(a)(2) unfair labor practice of discrimination "to encourage or discourage membership in any labor organization" is complicated by what I view as the paucity if not absence of evidence of antiunion animus or motivation, usually associated with such violations although not mentioned in the Authority's lead decision on unlawful discrimination, Letterkenny Army Depot, 35 FLRA 113 (1990). One way out of this difficulty might be the Authority's adoption of the private sector doctrine of "inherently destructive" employer actions, NLRB v.Great Dane Trailers, Inc., 388 U.S. 26, 34 (1967), a step the Authority has not yet found it necessary to take. See 305th Air Mobility Wing, McGuire Air Force Base, New Jersey, 54 FLRA 1243, 1245, 1250 n.3, 1264 (1988). A second difficulty in analyzing this case under section 7116(a)(2) is in determining whether Respondent established a Letterkenny defense by showing that it would have disciplined White for failing to make a report whether or not she had received the information in connection with protected activity. A subsidiary question is whether the Authority would entertain this defense where, as here, Respondent arguably raised it in substance (Br. at 9) but did not expressly identify it as such or did not label it correctly. See Social Security Administration, Region VII, Kansas City, Missouri, 55 FLRA 536, 539 n.3, 544 (1999).