Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF DEFENSE

U.S. ARMY RESERVE PERSONNEL COMMAND, ST. LOUIS, MISSOURI

Respondent

and

Case No.
DE-CA-80464

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO,
LOCAL 900

Charging Party

G.M. Jeff Keys, Esquire

For the Respondent

Lisa Belasco, Esquire

Michael Farley, Esquire

For the General Counsel

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)], concerns whether this proceeding is barred by § 16(d) of the Statute, the Union having filed a grievance on February 5, 1998 (Res. Exh. 2), and its initial charge herein on March 6, 1998 (G.C. Exh. 1(a)), and if it is not, whether Respondent on, or about February 3, 1998, violated § 16(a)(1) of the Statute by ordering the removal of two notices posted by Local 900 on the AFGE electronic bulletin board.

This case was initiated by a charge filed on March 6, 1998 (G.C. Exh. 1(a)) and a First Amended Charge, filed on September 30, 1998 (G.C. Exh. 1(b)). The Complaint and Notice of Hearing issued on September 30, 1998 (G.C. Exh. 1(c)), and set the hearing for December 8, 1998. By Notice dated November 27, 1998, the parties, in this and other cases set for seriatim hearings on December 8, agreed that the hearing be rescheduled for December 10, 1998, and, pursuant thereto, a hearing was duly held on December 10, 1998, in St. Louis, Missouri, 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, January 11, 1999, 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, January 15, 1999, which have been carefully considered. On the basis of the entire record[(2)], including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, AFL-CIO, Local 900 (hereinafter, "Union") is the exclusive bargaining representative of a unit of employees at Respondent (Tr. 13), which unit contains about 1100 employees, including employees of the Army Reserve Personnel Command (Tr. 13).

2. Respondent Army Reserve Personnel Command's automated communications is provided by Information Support Activity, ISA (Tr. 42-43). One of the automated communications systems is a cc mail system and anyone working on Respondent's premises with a valid TL account is assigned a number (password) which gives them access to the cc mail system (Tr. 43) which is more commonly called "E-mail" (Tr. 13, 14). In addition to E-mail, the cc mail system also contains the electronic bulletin boards of which there are a number, including one for the Union(Tr. 13). Ms. Mary C. Cooper, President of the Union since October, 1997 (Tr. 12) has a TL account (Tr. 44) and she can post messages on the Union's electronic bulletin board (Tr. 14, 43), however, she generally types, or her secretary types, a message which is sent to CCA (Centralized Customer Agency), a part of ISA, which actually does the posting (Tr. 14, 15) in five or ten minutes (Tr. 16). Ms. Cooper said that an item posted on the Union bulletin board would remain until the Union requested it be removed (Tr. 16).

3. On April 15, 1997, Colonel Donald G. Conway, Commander of Respondent, issued a memorandum for all personnel concerning policy on the use of the CC mail system (Res. Exh. 1; Tr. 49), Section 5 (PROCEDURES), Paragraph d. provides, in part, as follows:

"d. E-mail shall not be used for:.

... . .

"(7) Receiving, producing or sending annoying, harassing, lewd or offensive material.

. . . ." (Res. Exh. 1, Sec. 5, Par. d(7)).

4. By letter dated January 12, 1998, to Colonel Conway (G.C. Exh. 2; Tr. 17), Ms. Cooper requested, ". . . to bargain over the Labor Management. . . ." In her letter, Ms. Cooper stated that the Labor Management had expired January 1, 1998; that "It has been brought to the attention of the Union that your subordinates are still utilizing the guidelines of this agreement"; and then, Ms. Cooper's letter stated,

> "The Union request all actions as it pertains to the Agreement of the staffing plan cease until negotiations are complete." (G.C. Exh. 2)(Emphasis supplied).

5. By letter dated January 26, 1998[3] (G.C. Exh. 3), Colonel Timothy W. Cannon, Deputy Chief of Staff for Personnel, Administration and Logistics, replied to Ms. Cooper's January 12, 1998, ". . . request to bargain on the expired labor/management agreement/placement plan." (Tr. 18). Colonel Cannon in his letter of January 26, 1998, stated, in part, as follows:

> "On May 29, 1997, the Commander of AR-PERSCOM and the President of AFGE local 900 signed the Labor-Management Agreement, Staffing Plan, to staff the new Command. The same two parties signed an extension to this Staffing Plan on October 1, 1997, extending the provisions of the Plan until January 1, 1998. Thirty-seven employees were scheduled to be promoted to Grade GS-5 effective January 18, 1998, as part of this Plan. However, these promotions are on hold per your request for 'all actions as it pertains to the Agreement of the staffing plan cease until negotiations are complete.' These promotions will remain in abeyance until the completion of the negotiations that the Union requested on this issue. We will also pull back the referral for seven, GS-204-7 Military Personnel Technician positions in the Records Services Directorate. We will not re-announce these positions.
>
> "I truly hope you understand the consequences that your request will have on the bargaining unit employees that you represent. First and foremost, your request will put a hold on 37, Grade GS-5 promotions mentioned above . . . Management will hold these 37 promotions until the negotiations requested by the Union are completed. Let me know by January 28, 1998, if the Union wishes to bargain Impact and Implementation of these 37 promotions as they relate to the Staffing Plan that expired January 1, 1998. In order for these employees to receive their scheduled promotion pay beginning January 18 1998, the Union's requested negotiations must be concluded January 28, 1998. If the effective date of these promotions is changed, Management will notify the employees.
>
> . . . ." (G.C. Exh. 3).

6. The original copy of Colonel Cannon's letter to Ms. Cooper was not initialed by Ms. Cooper to show receipt (G.C. Exh. 3; Tr. 21-22); but the copy employees got hold of was a copy of the copy Ms. Cooper had initialed showing that she had received it on January 27, 1998 (G.C. Exh. 4; Tr. 21), i.e., a copy of Respondent's retained copy.

7. Ms. Cooper retaliated on January 29, 1998, at 3:46 p.m., by a notice to all bargaining unit employees on the Union's electronic bulletin board which provided, in part, as follows:

". . . On January 28, 198, Tim 'LOOSE' Cannon sent a letter to the Union President (SEE ATTACHED), stating that per the Union's request, he's holding all promotions until negotiations are complete.

". . . He purposely gives the impression that the Union asked to stop promotions. . . . Tim 'LOOSE' Cannon issued copies of his letter and the Union's request to negotiate to management and employees; thereby, attempting to BUST UP THE UNION.

". . . Tim 'LOOSE' Cannon sent me a letter via cc:mail stating that Management will proceed with the promotions of the GS-5's. He further stated that if the Union disagreed with the promotions, we could take appropriate actions. . . ." (G.C. Exh. 5).

8. Ms. Cooper testified that her notice to all employees of January 29, 1998, was removed from the Union electronic bulletin board (Tr. 25). Major David Mingo, Information Support Activity [ISA], Saint Louis, which supports, automation-wise, Respondent, testified that he was working late on January 29, 1998, when, at about 5:30 p.m., Major Boyd Collins, Public Affairs Officer for Respondent, came to his office and said, ". . . a message has been posted to the bulletin board that the command wants removed" (Tr. 47; G.C. Exh. 2/2/98 Major Mingo to Union)) and, after opening up the bulletin board and identifying it, he removed the message (Tr. 47). Major Mingo stated that, ". . .I took it to mean the commander of AF-PERSCOM told him [Major Boyd] to go downstairs and get the message taken off the bulletin board now." (Tr. 48), i.e., Colonel Conaway (Tr. 48).

9. Ms. Cooper testified that when she was told that her January 29 notice was no longer on the bulletin board, she, on February 2, 1998, ". . . put it back out." (Tr. 25; G.C. Exh. 6). Except for the date and time (2/2/98; 8:53 a.m.) General Counsel Exhibit 6 is identical to General Counsel Exhibit 5 (Tr. 25, 26). Ms. Cooper stated that, "This item [G.C. Exh. 6] didn't remain -- it didn't last throughout that day." (Tr. 26). Although General Counsel pointedly declined to ask Major Mingo whether the second message, G.C. Exh. 6, had been removed (Tr. 53), I find, as Ms. Cooper testified, it was removed and I further draw the inference from Major Mingo's message, that it had been removed before 10:41 a.m. on February 2, 1998 (G.C. Exh. 7) when his message re "AFGE 900 Message Screening" was sent.

10. Major Mingo's February 2, 1998, message which, Ms. Cooper received a copy (Tr. 26), was, as noted above, titled, "AFGE 900 Message Screening" and stated:

"1. 29 January 1800, MAJ Boyd Collins came to CCA and asked that a derogatory message be removed from AFGE's Bulletin board. I removed the message.

"2. I told him I would have my staff forward AFGE messages to me before posting them to the bulletin board. I neglected to inform my staff of this new requirement. . . . Today Ms Price reminded me of my commitment to MAJ Collins, and asked me to remove another derogatory message from the AFGE bulletin board.

"3. As of today myself or MSG Hill will review all AFGE messages prior to posting." (G.C. Exh. 7).

Ms. Cooper responded to Major Mingo on February 3, 1998. at 7:10 a.m., re: "AFGE 900 MESSAGE SCREENING" and, inter alia, asked for:

"1. The rules and regulations governing ccmail accounts?

. . .

"3. Are you CCA's POC, if so, the Union request to negotiate over this suddent (sic) change. If you are not CCA's POC, please ccmail me and let me know who is.

. . .

"5. And who determines 'DEROGATORY'.

"6. What exactly will you be looking for?

. . . ." (G.C. Exh. 7).

11. On February 5, 1998, Ms. Cooper, as President of the Union, filed the following grievance:

"Union Grievance RE: Censorship of the Union's Electronic Bulletin Board

"Dear Ms. Calloway:

"The Union was informed in February 3, 1998 that the Agency will censor it's Electronic Bulletin Board and remove whatever they deem necessary. This is in violation of Article XIII of the Collective Bargaining Agreement.

"The Union request to meet on February 12, 1998 at 1000 in your office. I have appointed James Shepherd, Ray Wilkins, and Martha Parsons (Trainee) as my designees for Union Grievances.

. . . ." (Res. Exh. 2).

12. On March 6, 1998, the Union filed the charge herein[4] which reads as follows:

> "On February 3, 1998 the Agency unilaterally changed a past practice without notifying this Union.
>
> "Specifically, the Agency instructed CCA to screen all Union messages on the AFGE Bulletin ccmail account. The AFGE Bulletin has NEVER been screened before. And the Union was not notified nor provided an opportunity to bargain." (G.C. Exh. 1(a)).

(Other than Section 7116(a)(1), the subsections alleged to have been violated are wholly unclear, the handwritten insertion being either indecipherable and/or largely non-germane).

13. On September 30, 1998, the Union filed a First Amended charge which reads as follows:

> "On February 3, 1998 the Agency unilaterally changed a post (sic) practice without notifying this Union.
>
> "Specifically, the Agency instructed the Centralized Communications Agency (CCA) to screen all Union messages on the AFGE Bulletin cc mail account and to remove two messages from the AFGE electronic 'bulletin board'. The AFGE Bulletin has NEVER been screened or messages on it removed before. And the Union was not notified nor provided an opportunity to bargain." (G.C. Exh. 1(b)).

Whatever might have been alleged in the original charge, plainly the First Amended charge, as does the Complaint, alleges only a violation of § 16(a)(1)(G.C. Exhs. 1(b); 1(c), Par. 18).

14. As written documents, the Union's grievance of February 5, 1998, and its charge of March 6, 1998, speak for themselves. Nevertheless, to complete the record, Ms. Cooper's statements are set forth as follows:

As to the grievance:

> "A . . . we did file a grievance, but it wasn't protesting the removal.
>
> "Q Well, what was the grievance about then?
>
> "A The last part of Major Mingo's CC message said that I and Master Sergeant somebody will censor or will screen the bulletin board. The bulletin board was covered in our contract. So

the union filed a grievance saying that the agency informed us that they will screen, but we didn't file a grievance saying that they violated the contract by taking or removing our

. . .

"A When I filed that union grievance, that's what I thought, but the contract doesn't say anything about electronic bulletin boards. I filed the grievance, however, because it didn't say that they would remove what we put up there." (Tr. 39-40) (Emphasis supplied).

. . .

"A That they had violated our collective bargaining agreement." (Tr. 55)

As to the charge:

"A When we filed the unfair labor practice charge, we were alleging that they were violating the statute by interfering with the union the way that we represented our employees, that they were changing the practice, that they were refusing to bargain in good faith by notifying us that they were -- by not notifying us they were removing it, that they didn't allow us the opportunity to bargain." (Tr. 56) (Emphasis supplied).

15. It is conceded that anyone with a valid TL account-bargaining unit employees, military, civilian - has access to the ccmail system, including, inter alia, the Union's bulletin board (Tr. 38, 50).

Conclusions

A. The Complaint is barred by § 16(d) of the Statute.

§16(d) of the Statute provides in pertinent part as follows:

> ". . . issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures. " (5 U.S.C. § 7116(d)).

The Authority long has made clear that:

> ". . . the elements of section 7116(d) which must attach in order for a grievance to be precluded [or, conversely, for an unfair labor practice complaint to be precluded, Internal Revenue Service, Chicago, Illinois, 3 FLRA 479 (1980)] are: (1) the issue which is the subject matter of the grievance is the same as the issue which is the subject matter of the unfair labor practice; (2) such issue was earlier raised under the unfair labor practice procedures; and (3) the selection of the unfair labor practice procedures was in the discretion of the aggrieved party. . . ." Department of Defense Dependents Schools, Pacific Region, (hereinafter, "DODDS, Pacific"), 17 FLRA 1001, 1002 (1985). As succinctly stated by the Authority in DODDS, Pacific, "Section 7116(d) effectively provides that when in the discretion of the aggrieved party, an issue has been raised under the unfair labor practice procedures, the issue subsequently may not be raised as a grievance. (17 FLRA at 1002); U.S. Department of The Army, Army Finance and Accounting Center, Indianapolis, Indiana, 38 FLRA 1345, 1350 (1991) (hereinafter, "Army Finance"); Olam Southwest Air Defense Sector (TAC), Point Arena Air Force Station, Point Arena, California, 51 FLRA 797, 801-802 (1996); American Federation of Government Employees, Local 1917, 52 FLRA 658, 663-664 (1996).

There is no dispute that the grievance and the charge herein each arose from the same set of factual circumstances, namely, the removal, or "censorship", of Ms. Cooper's February 2, 1998, message from the Union electronic bulletin board at which time, Respondent at 10:41 a.m., February 2, 1998, gave the Union written notice of its action (G.C. Exh. 7). In point of fact, Ms. Cooper "posted" the message on Thursday, January 29, 1998, and it was removed by Respondent on January 29; when she discovered it had been removed, Ms. Cooper "put it back" on Monday, February 2, 1998, when it, again, was removed.

The Union filed its grievance on February 5, 1998, and the Union filed the charge on March 6, 1998, so, plainly, the Union as the "aggrieved" party in each instance made its own free choice to file its grievance before it filed its charge - indeed, it actually prepared and signed its charge on February 3, 1998; but then "sat on it" for more than a month and did not file it until March 6, 1998.

The grievance which the Union filed on February 5, 1998, read, as material, as follows:

> "Union Grievance RE: Censorship of the Union's Electronic Bulletin Board
>
> "Dear Ms. Calloway:
>
> "The Union was informed in February 3, 1998 that the Agency will censor it's Electronic Bulletin Board and remove whatever they deem necessary. This is in violation of Article XIII of the Collective Bargaining Agreement. . . ." (Res. Exh. 2).

Ms. Cooper testified,

> ". . . I filed the grievance . . . because it [the Collective Bargaining Agreement] didn't say that they would remove what we put up there."[(5)] (Tr. 40) (Emphasis supplied).

The charge filed on March 6, 1998, read as follows:

> "On February 3, 1998 the Agency unilaterally changed a past practice without notifying this Union.
>
> "Specifically, the Agency instructed the CCA to screen all Union messages on the AFGE Bulletin cc mail account. The AFGE Bulletin has NEVER been screened before. And the Union was not notified nor provided an opportunity to bargain." (G.C. Exh. 1(a)).

Ms. Cooper testified as to the charge,

> ". . . we were alleging that they were violating the statute by interfering with the union the way that we represented our employees, that they were changing the practice, that they were refusing to bargain in good faith by notifying us that they were -- by not notifying us they were removing it, that they didn't allow us the opportunity to bargain." (Tr. 56).

As to the grievance, Ms. Cooper also testified that the grievance, ". . . wasn't protesting the removal" (Tr. 40), a statement I specifically do not credit because it is discredited by and contrary to her further statement that, ". . . I filed the grievance . . . because it [Agreement] didn't say that they would remove what we put up there." In addition, the grievance itself states that, "The Union was informed . . . that the Agency will censor it's (sic) Electronic Bulletin Board and remove whatever they deem necessary. . . ." (Res. Exh. 2). Moreover, Ms. Cooper's statement that the grievance concerned, "The last part of Major Mingo's cc message said that I and Master Sergeant somebody will censor or will screen the bulletin board. . . ." (Tr. 40) is given no credence for the reasons: (a) the last sentence of Major Mingo's message of February 2, 1998, read: "3. As of today myself or MSG Hill will review all AFGE messages prior to posting." (G.C. Exh. 7); (b) the only references to removal are Paragraphs 1. (dealing with the January 29 message) and 2. (dealing with the February 2 message)(G.C. Exh. 7); (c) the reference in the grievance to ". . . remove whatever they deem necessary" and in Ms. Cooper's testimony that she filed the grievance because the Agreement, ". . . didn't say that they would remove what we put up there." (Tr. 40), plainly show that the grievance did, indeed, refer to the whole of Major Mingo's message of February 2, 1998, and that the grievance specifically referenced removal of ". . . what we put up there." (Tr. 40).

The grievance and the charge each asserted censorship of the Union's electronic bulletin board. It is true that the grievance asserted that the censorship violated the parties' Agreement while the charge asserted that the censorship violated the Statute. As the Authority has stated,

> ". . . the Authority looks at whether the ULP charge arose from the same set of factual circumstances as the grievance and the theory advanced in support of the ULP charge and the grievance are substantially similar." (Army Finance, supra, 38 FLRA at 1351) (There, grievant, Acting Union Executive Vice President, received a ten day suspension for asserted offensive or abusive language. On February 11, 1988, ULP charge filed and on February 25, 1988, grievances were filed. Authority held grievances were barred by § 16(d)).

In United States Small Business Administration, Washington, D.C. [Robert Wildberger], 51 FLRA 413 (1995), which involves a statutory appeal, the Authority stated, in part, as follows:

> "In light of the Commerce decision, [976 F.2d 882 (4th Cir. 1992)] [The Authority's decision, Bureau of The Census and Edward Hanlon, 41 FLRA 436 (1991), was vacated and remanded with directions to dismiss, which the Authority subsequently did, 46 FLRA 526 (1992)], we take this opportunity to clarify how the Authority will apply its Army Finance test in cases analogous to Bureau of Census I. Where an employee has attempted to raise related issues both in an unfair labor practice proceeding and under either an appeals procedure or a negotiated grievance procedure, we will apply the Army Finance test in order to determine whether to invoke the jurisdictional bars set forth in section 7116(d). We will examine the subject matter of the ULP charge to determine if the factual predicate and legal theory are the same as the matter raised in the appeals procedure or grievance." (51 FLRA at 421).

In American Federation of Government Employees, Local 1917 and U.S. Department of Justice, Immigration and Naturalization Service, 52 FLRA 658 (1996), which involved an asserted unilateral change of dress code practices, the arbitrator held that, ". . . both the grievance and the ULP involved the same allegation that the Agency had changed dress code practices for both special agents and clerical personnel. . . ." (52 FLRA at 664), and the Authority agreed, stating, in part, ". . . it is clear that the ULP arose from the same set of factual circumstances as the grievance and the same theory was advanced in support of both the ULP and the grievance." (id.)

The original charge alleged, ". . . the Agency instructed CCA to screen all Union messages. . . ." (G.C. Exh. 1(a)) and the First Amended Charge added as instances of the screening, ". . .and to remove two messages. . . ." (G.C. Exh. 1(b)). Screening of messages, censorship, includes the removal of offending material as well as the rejection for posting. Consequently, the First Amended charge asserted no new cause of action but, rather, gave as specific instances of the screening, censorship, the removal of two messages.

Because the grievance and the charge each arose from the same factual circumstances and because each asserted the same theory, namely, the screening, or censorship, of the Union's messages on the electronic bulletin board, the Complaint herein is barred, pursuant to § 16(d) of the Statute, by the prior filed grievance.

B. Union message violated Policy on E-Mail use.

In April, 1997, Colonel Donald G. Conaway, Respondent's Commanding Officer, issued a memorandum to all personnel re: "Command Policy on APPERCEN [Army Reserve Personnel Center] E-Mail Use" (Res. Exh. 1; Tr. 49). Colonel Conaway's Command Policy refers to Public Law 100-235, Computer Security Act of 1987; to numerous Army Regulations; a memorandum of the Assistant Secretary of Defense of December 28, 1995, entitled, "Guidelines for Establishing and Maintaining a Department of Defense Web Information Service"; and a Department of the Army message of October 30, 1996, entitled, "Guidance for the Management and Operation of U.S. Army Websites, Department of the Army."

Paragraph 5 d. of the Command Policy provided, in part, as follows:

> "d. E-mail shall not be used for:

. . .

"(7) Receiving, producing or sending annoying, harassing, lewd or offensive material.

. . . ." (Res. Exh. 1, Sec. 5, Par. d(7)).

This policy was in effect before Ms. Cooper's message of January 29, 1998 (G.C. Exh. 5) which, after it was removed from the bulletin board by Respondent on January 29, 1998, the Union "re-posted" on the bulletin board on February 2, 1998. While not "lewd", Ms. Cooper's message plainly was annoying, harassing and offensive. For example:

> (i) Ms. Cooper said, in part, "The Agency is guilty of lying . . . Specifically, the Labor-Management Agreement (Placement Plan) expired January 1, 1998. . . . The Union requested that all actions initialed after the expiration of this Agreement ceased until negotiations were completed." (G.C. Exhs. 5, 6) (Emphasis supplied).

Ms. Cooper's representation simply was not true. She grossly misrepresented her letter of January 12, 1998, to Colonel Conaway. She might wished she had qualified her request, but this is what she said,

> "The Union request all actions as it pertains to the Agreement of the staffing plan cease until negotiations are complete." (G.C. Exh. 2) (Emphasis supplied).

Colonel Cannon very correctly advised Ms. Cooper in his letter of January 26, 1998, that, ". . . promotions are on hold per your request for 'all actions as it pertains to the Agreement of the staffing plan cease until negotiations are complete.'" (G.C. Exh. 3).

> (ii) Ms. Cooper referred to Colonel Cannon repeatedly in a demeaning manner as "Tim 'Loose' Cannon" or as "the Loose Cannon" (G.C. Exhs. 5, 6).

Calling a senior military officer, in the military environment of Respondent, an insulting name, in a derogatory manner and to do so over and over in an E-mail message available to all personnel, military and civilian alike, was annoying, constituted harassment and was offensive to Colonel Cannon, personally, and to Respondent in general.

Because Ms. Cooper's message of January 29, 1998, which she "re-posted" on February 2, 1998, violated Command Policy, the removal of her message on January 29 and February 2, 1998, was fully consistent with established policy and the removal constituted no change in established conditions of employment. Accordingly, if it should be determined that the Complaint is not barred by § 16(d) of the Statute, I would, nevertheless, find that because Ms. Cooper's message of January 29, 1998, which she, "re-posted" on February 2, 1998, was removed because it plainly violated established Command Policy on the use of E-mail, constituted no change of established conditions of employment and did not violate § 16(d)(1) of the Statute.

For the foregoing reasons, having found that the Complaint herein is barred by § 16(d) of the Statute; but, if it were not barred by § 16(d), Respondent did not violate § 16(a)(1) of the Statute, it is recommended that the

Authority adopt the following:

Order

The Complaint in Case No. DE-CA-80464 be, and the same is hereby, dismissed.

_____

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: March 8, 1999

Washington, DC

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DE-CA-80464, were sent to the following parties in the manner indicated:

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 7116(a)(1) will be referred to, simply, as, "§ 16(a)(1)".

2. General Counsel's Motion To Correct Transcript, to which no objection was made, and which is wholly meritorious, is granted and the transcript is hereby corrected as follows:

PAGE	LINE	FROM	TO
4	4	1(a)-(j)	1(a)-(i)
9	12	G.C. Exhibit 1(a)-(j)	G.C. Exhibit 1(a)-(i)
10	8	1977	1997
11	7	7616(a)(1)	7116(a)(1)

20 3 term turn

25 7 moved removed

29 14 CDA CBA

32 16 involved resolved

35 8 Exhibit Exhibit 9

38 18 1,10 1,100

47 10 Floyd Boyd

49 21 implication implementation

3. Colonel Cannon stated in his letter that he had responded on January 16, 1998, by a, ". . . draft e-mail and attachment" (G.C. Exh. 2) and that this letter of January 26, 1998, is an amended response. The text of the January 16, 1998 documents were not offered.

4. The charge is dated: 2/3/98; but was not filed until March 6, 1998 (G.C. Exh. 1(a)).

5. To be sure, as Ms. Cooper stated, ". . . the contract doesn't say anything about electronic bulletin boards. . . ." (Tr. 40); but, although I express no opinion as to the validity of the assertion that the provisions of Article XIII, which specifically refer only to the "old fashioned" display boards affixed to a wall, or displayed on an easel, extend to electronic bulletin boards, nevertheless, such interpolation and/or interpretation is by no means uncommon.