

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

MEMORANDUM

DATE: February 5, 2010

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER  
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE  
AIR FORCE MATERIEL COMMAND  
WARNER ROBINS AIR LOGISTICS CENTER  
ROBINS AIR FORCE BASE, GEORGIA

RESPONDENT

AND

Case No. AT-CA-08-0277

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,  
LOCAL 987

CHARGING PARTY

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

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**FEDERAL LABOR RELATIONS AUTHORITY**  
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AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 987

CHARGING PARTY

**NOTICE OF TRANSMITTAL OF DECISION**

The above-entitled case having been heard by the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 8, 2010**, and addressed to:

Office of Case Intake & Publication  
Federal Labor Relations Authority  
1400 K Street, NW., 2<sup>nd</sup> Floor  
Washington, DC 20424-0001

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CHARLES R. CENTER

Chief Administrative Law Judge

Dated: February 5, 2010  
Washington, D.C.

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C.

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DEPARTMENT OF THE AIR FORCE  
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EMPLOYEES, LOCAL 987

CHARGING PARTY

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Brent S. Hudspeth, Esq.  
Mark D. Halverson, Esq.  
For the General Counsel

Brenda S. Mack, Esq.  
For the Respondent

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION**

**STATEMENT OF THE CASE**

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (Authority), Part 2423.

A Complaint and Notice of Hearing issued on September 18, 2009, based upon an unfair labor practice charge filed on April 2, 2008, by the American Federation of Government Employees, Local 987 (Union), against the Department of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Center, Warner Robins,

Georgia (Respondent). The Complaint alleges that the Respondent refused to accept the invocation of arbitration in three grievances<sup>1</sup>, and thereby violated §7116(a)(1) and (5) of the Statute.

A hearing was held in Warner Robins, Georgia, on December 7, 2009, where all parties were represented and afforded a full opportunity to be heard, produce relevant evidence, and examine and cross-examine witnesses. Although Counsel for the General Counsel filed a timely post-hearing brief, a post-hearing brief was not submitted by the Respondent.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

### **Findings of Fact**

The Respondent is an agency under §7103(a)(3) of the Statute. (G.C. Ex. 1(f)). The Union is a labor organization within the meaning of §7103(a)(4) of the Statute. (*Id.*). The Union is the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent's facility. (*Id.*).

On or about October 17, 2007, the Union, through its president, Tom Scott, advised the Respondent that Patti Williams would serve as a full-time Union representative for AFGE Local 987 under the Defense Logistics Agency (DLA) Master Labor Agreement. (Jt. Ex. 1). AFGE Local 987 is an organization consisting of several separate bargaining units at Warner Robins Air Force Base and other locations, including the Air Force Materiel Command (AFMC) and the Defense Logistics Agency, with each having a separate master agreement. (Tr. 5-17) Between March 25 and 27, 2008, Local 987 gave the Respondent notice that it was invoking arbitration on four separate grievances related to employees subject to the AFMC master agreement and each notice was signed by Patti Williams. (Jt. Ex. 5, 6, 7 & 8). Although she signed the notices on behalf of Local 987 and was a full-time Union representative under the DLA master agreement, Ms. Williams did not represent any of the individuals in the grievance process established by the master agreement applicable to AFMC employees. (Tr. 53) On March 28, 2008, the Respondent issued a letter to the Union indicating that it was rejecting the invocation of arbitration in case numbers L08/011, 08/023, L08/030 and L08/27 because Ms. Williams was a full-time Union representative under the DLA master agreement and her working on matters related to the AFMC agreement infringed the limit on the total number of full-time Union representatives authorized under that agreement. (Jt. Ex. 9) At the hearing, John Pugh, the representative of the Respondent responsible for rejecting the invocations of arbitration testified that in his view, Patti Williams' appointment as a one hundred percent (100%) official time representative under

the DLA contract precluded her from working in any fashion and at any time on any matter related to the AFMC contract. (Tr. 66-68) In his opinion, it did not matter whether she performed such work on official time, while on leave, or on personal time. (Tr. 67).

<sup>1</sup> Paragraph 12 of the Complaint indicates three grievances were involved, however, the evidence in the record establishes that the Respondent's letter of March 28, 2008, actually rejected the invocation of arbitration in four grievances for which Patti Williams signed the notices.

## **Discussion and Analysis**

### **Position of the Parties**

#### **A. General Counsel and the Charging Party**

The General Counsel contends that by rejecting the invocation of arbitration in grievances filed under the AFMC labor agreement because they were signed by an individual who was a full-time Union representative under a different labor agreement interferes with the Union's right to designate its own representative and that the failure to recognize the Union's duly appointed representative violates §7116(a)(1) and (5) of the Statute. (Tr. 10-13; G.C. Brief at 5-7). The General Counsel also contends that the Respondent cannot justify its action on the basis that Patti Williams' involvement with grievances related to the AFMC labor agreement violated Section 4.13(a) of that agreement. In support of its position, the General Counsel cites *Dep't of the Air Force, HQ Materiel Command*, 49 FLRA 1111, 1120 (1994); *AFGE Local 1738*, 29 FLRA 178, 188 (1987); *U.S. Dep't of Veterans Affairs*, 57 FLRA 515, 518-19 (2001); *Air Force Materiel Command, Warner Robins Air Logistics Center, Robins AFB, GA.*, 54 FLRA 1529, 1534 (1988); and *Food and Drug Admin., Newark Dist. Office, W. Orange, NJ.*, 47 FLRA 535, 566-67 (1993).

#### **B. Respondent**

Although the Respondent failed to file a post-hearing brief, at the hearing the Respondent argued that its refusal to accept the invocations of arbitration signed by Patti Williams was justified and thus not an unfair labor practice because of her involvement with grievances filed under the AFMC labor agreement violated Section 4.13(a) of that agreement, which limits the number of union representatives who may be on one hundred percent (100%) official time to five. Respondent contends that allowing Ms. Williams to work on matters related to the AFMC master agreement results in her being a sixth full-time union representative in violation of the five person limit as set forth in Section 4.13(a).

### **Discussion**

#### **A. The Agency Failed to Recognize a Duly Authorized Representative**

An agency's failure to recognize duly authorized representatives of a union violates §7116(a)(1) and (5) of the Statute. *U.S. Dep't of Veterans Affairs*, 57 FLRA 515, 518-19 (2001) (citing *FEMA, HQ, Washington, D.C.*, 49 FLRA 1189, 1201 (1994)). The *prima facie* elements of such a claim are: (1) the union authorized a representative to act on its behalf;

(2) the union provided notice of that authority to the agency; (3) the representative took or attempted to take actions on behalf of the union within the scope of his or her authority; and (4) the agency failed to recognize the representative on matters that were within the scope of authority.

The record in this case demonstrates that all four elements of a *prima facie* case have been met. Local 987 provided written notice of Patti Williams' authority to act on its behalf on October 19, 2007 and again on March 11, 2008. (Jt. Ex. 1, 2). Union President Tom Scott

further clarified her status for John Pugh on March 19, 2008, explaining that the scope of Williams' authority was not limited to just matters related to the DLA labor agreement and extended to her authority to sign correspondence to the Respondent on behalf of Local 987. (Jt. Ex. 4).

Pursuant to her authority, Patti Williams took actions within the scope of that authority by preparing and signing correspondence to the Respondent, dated March 25 and 27, 2008, which invoked arbitration in the matters of four grievances brought pursuant to the AFMC labor agreement. (Tr. 20, 46-47; Jt. Ex. 6, 7, 8) Despite the explicit clarification to Respondent's agent John Pugh that such actions were within the scope of Williams' authority, he refused to recognize Williams as a representative of Local 987 and he rejected the letters invoking arbitration signed by her on March 28, 2008. (Tr. 21; Jt. Ex. 9). Accordingly, unless an affirmative defense is presented, the Respondent violated the Statute by refusing to recognize Patti Williams as a representative of Local 987.

**B. The Respondent's Failure to Recognize a Duly Authorized Representative was not Justified by Section 4.13(a) of the AFMC Master Agreement**

In correspondence with Local 987, and again in his testimony at the hearing, John Pugh indicated that his refusal to recognize Patti Williams as a duly authorized representative of the Union was justified because doing so would violate Section 4.13(a) of the AFMC master agreement. (Jt. Ex. 3, 9; Tr. 61-62). In essence, the Respondent articulates a contract interpretation affirmative defense.<sup>2</sup> The Respondent takes the position that the Union's designation of Patti Williams to assist with matters related to the AFMC bargaining

unit violates Section 4.13(a) of that agreement because it effectively gives Local 987 six stewards on one hundred percent (100%) official time instead of the five specified in Section 4.13(a) of the AFMC agreement.

However, Respondent's argument is misplaced. In *U.S. Dep't of Air Force, HQ, Air Force Materiel Command*, 49 FLRA 1111, 1120 (1994), the Authority made clear that provisions within master agreements which impose limits on the number of union representatives who are entitled to work on official time do not limit a union's right to designate as many representatives as circumstances may require nor do they establish limits upon the location from which representatives can be drawn.

Furthermore, the record in this case provides no evidence that Patti Williams created and executed the letters invoking arbitration while she was working on official time pursuant to her status as a steward under the DLA master agreement. In fact, testimony of Williams

<sup>2</sup> In *Internal Revenue Service, Washington, D.C.*, 47 FLRA 1091, 1103 (1993), the Authority set forth a "contract interpretation" test. This test applies to unfair labor practice charges that involve a parties' underlying duty to bargain (rather than bargaining on a specific subject matter) or, as in this case, any other non-bargaining statutory right. As explained by the Authority:

[W]hen a respondent claims as a defense to an alleged unfair labor practice that a specific provision of the parties' collective bargaining agreement permitted its actions alleged to constitute an unfair labor practice, the Authority, including its administrative law judges, will determine the meaning of the parties' collective bargaining agreement and will resolve the unfair labor practice complaint accordingly.

and Union President Tom Scott was that she did not prepare the letters while she was on official time, and that testimony was not challenged or rebutted. (Tr. 31, 37-38, 49) More importantly, it was the testimony of John Pugh, the representative for the Respondent who rejected the letters invoking arbitration that whether Ms. Williams was on official time or not did not matter to him, that it was her status as a representative under the DLA labor agreement which precluded her from working on matters related to the AFMC agreement. (Tr. 63, 66-67) When a master labor agreement includes limitations on the use of official time, a union representative may be precluded from working on matters related to that agreement while on official time pursuant to another agreement.<sup>3</sup> However, such are not the facts presented in this case and the overly broad disqualification imposed by Respondent's representative is not supported by law and no citation of such authority was provided at the time of the rejection or at the hearing. As Patti Williams' appointment as a one hundred percent (100%) official time Union steward under the DLA labor agreement did not preclude her from assisting Local 987 in any other capacity, an affirmative defense was not established by Respondent and the refusal to recognize an appointed representative of the Union violated the Statute.

### **CONCLUSION**

Based upon the foregoing, I find that a preponderance of the evidence establishes that the Respondent violated §7116(a)(1) and (5) of the Statute by refusing to recognize Patti Williams as a representative of Local 987 in March of 2008. Accordingly, it is recommended that the Authority adopt the following Order:

### **ORDER**

Pursuant to §2423.41(c) of the Authority's Rules and Regulations and §7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, shall:

1. Cease and desist from:

**(a) Failing or refusing to recognize Patti Williams as a duly designated representative of the American Federation of Government Employees, Local 987.**

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

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

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<sup>3</sup> Use of the word "may" is meant to convey its speculative, rather than its permissive meaning. Clarification of whether work related to a collective bargaining agreement containing a limitation on use of official time can be performed by a union representative working on official time pursuant to a second collective bargaining agreement is a question for the Authority to address when it is properly presented by facts that are not present in this case.



**(a) Post at its Warner Robins Air Force Base, Georgia, 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 Commander, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.**

**(b) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, 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., February 5, 2010.

CHARLES R. CENTER  
Chief Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**

**POSTED BY ORDER OF THE**

**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Department of the Air Force, Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT fail or refuse to recognize Patti Williams as a duly designated representative of the American Federation of Government Employees, Local 987.

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

\_\_\_\_\_  
(Agency/Activity)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, and whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404)331-5300.

## CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-08-0277, were sent to the following parties:

### CERTIFIED MAIL & RETURN RECEIPT

### CERTIFIED NOS:

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Mark D. Halverson, Esq.  
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Federal Labor Relations Authority  
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**Atlanta, GA 30303**

**7004-1350-0003-5175-3420**

**Brenda S. Mack, Esq.**  
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Agency Representative  
Office of the Staff Judge Advocate  
Warner Robins Air Logistics Center  
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**Thomas Scott, Jr.**  
President, AFGE Local 987  
1764 Watson Boulevard  
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### REGULAR MAIL:

President  
AFGE, AFL-CIO  
80 F Street, N.W.  
Washington, DC 20001

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Catherine Turner  
Office of Administrative Law Judges  
Federal Labor Relations Authority

Dated: February 5, 2010  
Washington, DC