

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

INTERNAL REVENUE SERVICE PHILADELPHIA SERVICE CENTER Respondent and NATIONAL TREASURY EMPLOYEES UNION Charging Party	 Case No. BN-CA-50594

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before 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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **MAY 27, 1997**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 23, 1997
Washington, DC

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: April 23, 1997

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: INTERNAL REVENUE SERVICE
PHILADELPHIA SERVICE CENTER

Respondent

and

Case No. BN-CA-50594

NATIONAL TREASURY EMPLOYEES UNION

Charging Party

Pursuant to Section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

INTERNAL REVENUE SERVICE PHILADELPHIA SERVICE CENTER Respondent and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. BN-CA-50594

Jack T. Anagnostis, Esquire
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On Brief
For the Respondent

Martha D. Finlator, Esquire
Paula Ricciardelli, Esquire
On Brief
For the Charging Party

Barbara S. Liggett, Esquire
David J. Mithen, 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, and the

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) (2) will be referred to, simply, as, "\$ 16(a) (2)."

Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether: (a) Respondent failed to select Ms. Solone A. West for a position as Lead Tax Examining Clerk because of absence from work on official time, in violation of §§ 16(a) (1) and (2) of the Statute; and/or (b) Respondent told Ms. West that she wasn't promoted because she used too much official time, in violation of § 16(a)(1) of the Statute? For reasons fully set forth hereinafter, I find that Respondent's refusal to select Ms. West in April, 1995, violated §§ 16(a)(1) and (2) of the Statute.

This case was initiated by a charge filed on June 9, 1995 (G.C. Exh. 1(a)), but the Complaint and Notice of Hearing did not issue until July 31, 1996 (G.C. Exh. 1(c)) setting the hearing for September 26, 1996, at a place to be determined in Philadelphia, Pennsylvania. By Notice, dated August 30, 1996, (G.C. Exh. 1(e)), the place of hearing was set, pursuant to which a hearing was duly held on September 26, 1996, in Philadelphia, Pennsylvania, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence and testimony on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, October 28, 1996, was fixed as the date for mailing post-hearing briefs which time was subsequently extended, on Motion of the Charging Party, to which the other parties did not object, for good cause shown, to November 29, 1996. Respondent, Charging Party and General Counsel each timely mailed an excellent brief, received on, or before, December 2, 1996, which have been carefully considered. The Transcript² and Exhibits were not received by this Office until March 3, 1997. 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. National Treasury Employees Union (hereinafter, "NTEU") is the certified exclusive representative of a nationwide unit of employees of the Internal Revenue Service (hereinafter, "IRS"), including employees in the Philadelphia Service Center (hereinafter, "Respondent").

2

General Counsel's unopposed motion to correct the transcript, being wholly meritorious, is granted and the transcript is hereby corrected as follows:

<u>Page</u>	<u>Line</u>	<u>From</u>	<u>To</u>
26	24	was reached	were raised

2. Ms. Solone A. West is employed as a Tax Examiner, GS-5; is included in the bargaining unit; has held her present position for five years; and has been employed by Respondent for about ten years (Tr. 18, 29). Ms. West is assigned to a "Swing Unit" which is a group of employees who split their time between two branches. From January through June, the "Swing Unit" processes tax returns in the Data Conversion Branch and from July through December "swings" to the Underreporter Branch to work on tax returns involving under reported income (Tr. 19).

3. Ms. West has a different supervisor depending on which branch she is working. In Data Conversion, from January through June, she is supervised by Ms. Lorraine T. Ings (Tr. 18) and in Underreporter, from July through December, she is supervised by Ms. Yvette Love (Tr. 18); however, Ms. Ings has served as swing manager for both branches when the Underreporter Branch was without a manager (Tr. 42, 43) and, on and off, has supervised Ms. West for about three or four years (Tr. 19).

4. Ms. West has been an active member of NTEU for several years and has served as steward, membership coordinator and legislative aide (Tr. 20). In 1993, Ms. West was appointed by NTEU to serve on the CORS business team, which was a national level, joint labor-management effort to re-engineer and improve IRS. She was one of two NTEU representatives from Philadelphia on this team and participation required significant travel and high usage of official time (Tr. 21, 22). During her tenure on CORS, which extended from 1993 to July, 1995, Ms. West estimated that 70% of her time was on official time as a NTEU representative. Currently, as a steward, she estimated that she spends 20% of her time on official time as a NTEU representative and 80% of her time doing tax examiner work (Tr. 21). Although Ms. West's use of official time was not questioned, it was clear that her absence as a member of CORS inconvenienced management (Tr. 22, 58).

5. Ms. West grieved her performance appraisals covering the years 1993, 1994 and 1995 and her appraisal was raised in each instance (Tr. 26). Both in the 1993 and the 1994 grievances, Ms. West's use of official time was discussed and, clearly, had affected her initial performance appraisal. Her 1993 appraisal, which Ms. Ings had initialed (Tr. 27), was raised by the Branch Manager, Ms. Sharon Glenn (Tr. 27), and the adjusted appraisal (Tr. 34), which was used for her bid for the Lead Tax Examining Clerk opening, discussed hereinafter, was dated April 20, 1994 (Res.

Exh. 1). The grievance meeting on her 1994 appraisal³ was held in February, 1995 (Tr. 28). Ms. West testified Ms. Ings,

"A . . . She really didn't like the fact that I had a nerve to grieve my evaluation again.

"Q Did she say why she thought you should not grieve?

"A Because that I am not in the work place to -- why should my evaluation be any better than anyone else's if I'm not there to perform my duties." (Tr. 28).

Ms. Ings confirmed Ms. West's testimony and, when asked if she remembered making statements at the February, 1995, grievance meeting, testified as follows:

"A I probably did because her travel status did put a hardship on me and my unit because, as I stated before, I always had to get somebody to complete Solone's work." (Tr. 58).

Moreover, in 1994, when Ms. West was her employee, Ms. Ings counseled Ms. West and testified, ". . . at that particular year, Solone was doing a lot of traveling. She was on some type of task force. And I just felt that her traveling probably interfered with her performance because she probably could have come (sic) up higher had she not been traveling as much. So she wasn't there to do the work, therefore, her standards fell." (Tr. 49-50). On cross-examination, she made it clear that she told Ms. West, ". . . I said something to her to the effect about her traveling status puts a hardship on my unit because I always have to get somebody to do her work." (Tr. 58).

6. On November 14, 1994, Respondent posted a vacancy announcement for: Lead Tax Examining Clerk, GS-6 (Res. Exh. 2). The closing date was November 28, 1994, and the Best Qualified list was issued January 20, 1995. Ms. West was fourth on this list, with a score of 134; Mr. Patrick Hopkins was third, with a score of 137; Ms. Lendora M. Goodwin was second, with a score of 151; and Ms. Melissa A. Knight was first, with a score of 159 (Res. Exh. 2).

3

Attended by: Terry Bolhill, Ms. West's then manager; Lorraine Ings, who was no longer her manager but sat in the meeting; Pat Mason, LMR specialist; Mr. Joe Kraft, steward; and Ms. West (Tr. 28).

On January 24, 1995, Ms. Knight was selected; but she declined the position because she had, ". . . already accepted another position of a higher grade" (Res. Exh. 2; Tr. 23).

On February 13, 1995, a new Best Qualified list issued on which Ms. Goodwin was first; Mr. Hopkins was second; Ms. West was third; and a Ms. Mary L. Gingrich was fourth, with a score of 132 (Res. Exh. 3). Ms. Goodwin was selected on February 21, 1995, but declined the position (Res. Exh. 3; Tr. 25).

On March 9, 1995, a new Best Qualified list issued on which Mr. Hopkins was first; Ms. West was second; Ms. Gingrich was third; and Ms. Patricia Martin was fourth, with a score of 127 (Res. Exh. 4). Mr. Hopkins was selected on March 15, 1995, but declined the position (Res. Exh. 4).

On April 5, 1995, a new Best Qualified list issued on which Ms. West was now first; Ms. Gingrich was second; Ms. Martin was third; and a Ms. Debra R. Henesey was fourth, with a score of 118 (Res. Exh. 5).

But, rather than select Ms. West as the highest scoring candidate, as it had done on the three prior occasions, Ms. Mary McKeever, Section Chief, Data Conversion Branch (Tr. 71) and Ms. Ings' supervisor, came to Ms. Ings, showed her the April, 1995, certificate and, ". . . asked me [Ings] did I want to pick anybody from the list, and at that particular time I told her no because I had already cast (sic) someone acting as my lead." (Tr. 44); ". . . as I said, I already had someone acting in that spot. I was comfortable with the person that I had." (Tr. 45). Nevertheless, Ms. Ings recognized that the vacancy still existed and that it would be announced again, as she said, ". . . I guess it had to be if we didn't choose anybody at that particular time. That's the usual procedure." (Tr. 47).

7. Ms. McKeever on April 12, 1995, in a memorandum to Rose Mary, whose position was not identified, requested,

"Per our conversation we are not selecting any one to fill this position, based on the data we spoke (word unclear). Please forward the package to personnel" (Res. Exh. 6) (Emphasis supplied).

Ms. McKeever was not called as a witness and, of course, no explanation was provided as to what "data" she had discussed with Rose Mary, or why she had talked to Rose Mary about not

filling this position. I draw the adverse inference that the "data" referred to concerned Ms. West's official time usage.⁴ Ms. Ings testified that the only certification she was shown was the April certification on which Ms. West was first; that Ms. McKeever never discussed the vacancy announcement until April (Tr. 43); and she knew nothing about the selection of Ms. Knight or Ms. Goodwin

[Mr. Hopkins was a Tax Examiner, GS-6 (Res. Exhs. 2, 3 and 4) and apparently not under her supervision. In any event, she was not asked about presenting, ". . . [the] piece of paper asking them to accept or decline the position" (Tr. 56), to Mr. Hopkins] until she received the notification of their selection. I draw the further adverse inference that Ms. McKeever, knowing that Ms. West was first on this certification and without justification for not selecting Ms. West, went to Ms. Ings to conceal her, McKeever's, and/or her supervisor's, Mr. William E. Measure, Chief Underreporter Branch, refusal to select Ms. West.

8. Ms. Ings gave as justification for her refusal to select Ms. West that, ". . . she had already cast (sic) someone acting as my lead" (Tr. 44). Then she added, "Well, as I said, I already had someone acting in that spot. I was comfortable with the person that I had. Plus, it was during peek (sic) season . . . we're pretty busy around peek (sic) season, and we don't really have the time to stop and train someone else to do the position. Debbie, the employee that I had as my acting lead, I was comfortable with her; my employees were comfortable with her. . . ." (Tr. 45). Later she emphasized that, ". . . I just didn't have the time to train anybody at that particular time, and we just usually don't pick leads during peek (sic) seasons." (Tr. 46). The justification given was wholly pretextual.

First, Ms. Ings was not forthright in her assertion that Ms. Debbie Kent was acting as Lead Tax Examiner Clerk (Tr. 45, 46, 47) and misrepresented the departure of Ms. Roshita Travers (Tr. 47). Ms. Travers had been the Lead Tax Examiner Clerk during the entire period Ms. West had been in her unit - about five years (Tr. 29) - and she had been selected for another position. Indeed, because Ms. Travers was leaving, this vacancy had been posted in November, 1994. Ms. Ings first said, "When Roshita

4

Indeed, the record would support no other assumption. The vacancy remained; it required filling and was filled a short time later, in August, 1995; and the only matter shown on the record to involve "data" at all, was Ms. West's official time usage.

[Travers] left me -- well, while she was my lead, Debbie was my back (sic). So once Roshita left, I just chose Debbie to be the acting lead until that position got filled." (Tr. 47). But Ms. Travers had "missed her training" (Tr. 52) and was, "still sitting with me" (Tr. 52). Not only was Ms. Travers still there in April, 1995, she was there at least until, "the latter part of '95" (Tr. 53) and quite probably through all of 1995, "When we swung in that conversion of '96 [i.e., January, 1996], Roshita didn't swing back with us"; ". . . So when we swung in '96 of this year, she didn't come back with me." (Tr. 51).

Ms. Ings first insisted that Ms. Kent, after January, 1995, was her acting lead (Tr. 45-46, 47). When, on cross-examination, she admitted Ms. Travers was still there, she said Ms. Kent was her backup, "As her back up because Roshita was still there with me. She knew the job. Okay. Debbie would act when Roshita was out as my back up." (Tr. 52); ". . . Roshita was still acting as the lead . . ." (Tr. 53). But thereafter, she again asserted that, no, Ms. Kent was functioning as lead tax examiner (Tr. 53).

Second, Ms. Ings testified that the peak season in Data Conversion is January through about May (Tr. 51, 53). As noted above, Ms. Knight had been selected on January 24; Ms. Goodwin had been selected on February 21; and Mr. Hopkins had been selected on March 15, each within the Data Conversion peak period; but when the April Certification issued with Ms. West as the top candidate, for the first, and only time, Ms. Ings asserted, ". . . we don't really have the time to stop and train someone else to do the position. . . ." (Tr. 45) and ". . . we just usually don't pick leads during peek (sic) seasons" (Tr. 46). Ms. Ings' assertions were belied by the selection of Knight, Goodwin and Hopkins. Moreover, there could not have been a more propitious time to train a new Tax Examining Clerk as, regardless of which version of Ms. Ings' testimony is accepted, Ms. Travers, a Lead Tax Examiner with many years experience was present awaiting assignment to a new position, and available to train a new lead tax examiner if Ms. Ings were truthful in the assertion that Ms. Kent was acting as her lead, or if, Ms. Ings were truthful in the assertion that Ms. Travers was still acting as the lead, as I believe she was, then Ms. Kent, who had experience as Ms. Travers' back-up, was present and available to train a new lead tax examiner.

Third, as Ms. West stated, the swing unit always operates in a peak season (Tr. 19), i.e., from January to

June in the Data Conversion branch and from July to December in the Underreporter Branch.

9. Ms. West testified, or her testimony can be read to mean, that after she, West, learned of Ms. Knight's selection she asked Ms. Ings about it and Ms. Ings told her, ". . . who's going to do the job if you're not going to be there. I mean, I would have to train somebody and why should you get paid for this position and you're not going to be there?" (Tr. 24). Ms. Ings did not recall any conversation with Ms. West about her not being selected in January, 1995 (Tr. 50), and she did not remember any conversation with Ms. West after the vacancy announcement in November of 1994 (Tr. 50) - indeed, she denied any conversation with Ms. West (Tr. 50). I do not credit Ms. West's testimony that she spoke to Ms. Ings in January, 1995, about her, West's, not having been selected. I have not credited Ms. West's testimony for a number of reasons. First, Ms. Ings did not recall any such conversation. Second, Ms. West testified that Ms. Knight, a friend, had come to her and told her that she, Knight, had got the promotion; that she, West, had asked about her performance appraisal and was told she, Knight, had not got an award. Understandably, because Ms. West had received an award, she believed, albeit erroneously (Res. Exh. 2), that she must have been rated higher (Tr. 23-24). Ms. West testified,

"Q Did you talk with anyone in management after you learned of Melissa Knight's selection?

"A No. I went to the union office." (Tr. 24).

As a Union official, Ms. West knew that the Union got a copy of the Best Qualified list (Tr. 26) and, even though the Union's copy did not have scores (Tr. 32), she would have known that candidates were listed in the order of their scores, with the highest being first, etc. Once she saw the Best Qualified list, she would have known that Ms. Knight had ranked first; that she, West, had ranked fourth; and that Respondent had selected the employee ranked first. Third, Ms. Ings was not the selecting official and had Ms. West asked her why she, West, was not selected, it is not believable that she would have responded as Ms. West stated. Rather, she would have said just that, namely, that she had not been the selecting official. Fourth, Ms. West's statement is not convincing as a reply as to why, in January, 1995, Ms. Ings said she was not selected, thus, Ms. West stated, "Well, it was -- I had asked her about the position, and most of the time -- at that time, I was on the travel status. So her main thing was who's going to do the job if you're not going to be there. I mean, I would have

to train somebody and why should you get paid for this position and you're not going to be there?" (Tr. 24). This sounds more like a statement Ms. Ings might have made if Ms. West, in 1994, when the vacancy announcement came out, had asked Ms. Ings about the vacancy. The obvious difficulty is that any statement in November was more than six months before the charge was filed (G.C. Exh. 1(a)). Or, it may very well stem from Ms. Ings' January, 1995, statement at the grievance meeting that Ms. West's, ". . . traveling status puts a hardship on my unit because I always have to get somebody to do her work." (Tr. 58); or it could well have been Ms. West's question in April, when she was not selected even though she was then first on the Best Qualified list, and Ms. Ings' response, inasmuch as Ms. Ings, for the first and only time in April made the decision not to select; but I am convinced that Ms. Ings did not, in January, 1995, tell Ms. West that she had not been selected because she was away from work too much on official time, i.e., Ms. Ings did not tell Ms. West she was not selected because ". . . who's going to do the job if you're not going to be there . . . why should you get paid for this position and you're not going to be there?", and this, and no other, is, in essence, the allegation of Paragraph 22 of the Complaint.

CONCLUSIONS

General Counsel has shown by a preponderance of the evidence that Ms. West was engaged in protected activity and that a motivating factor in Respondent's refusal to select her for promotion to Lead Tax Examining Clerk in April, 1995, was her engagement in protected activity. Accordingly, General Counsel had made a prima facie showing that Respondent violated §§ 16(a)(1) and (2) of the Statute by its refusal to select Ms. West for promotion in April, 1995. Letterkenny Army Depot, 35 FLRA 113 (1990); Federal Emergency Management Agency, 52 FLRA No. 47 (1996). Respondent failed to rebut this showing and its affirmative defense that it did not promote Ms. West in April, 1995, because it was peak season and it did not have time to train a Lead Tax Examining Clerk was wholly pretextual. Respondent failed to show that the same action would have been taken in the absence of the protected activity. Thus, I have drawn the adverse inferences from Respondent's failure to call Ms. McKeever, the supervisor of Ms. Ings who supervised Ms. West, and from Respondent's Exhibit 6, which was a memorandum from Ms. McKeever that: (a) Ms. McKeever, knowing that she, and/or Mr. William E. Measure, Chief Underreporter Branch, had no justification for not selecting Ms. West, inasmuch as Ms. West was first on the Best Qualified list and the consistent practice had been to

select, for this position, the employee first on the Best Qualified list; and (b) that Ms. McKeever based the decision not to select anyone on the consideration of Ms. West's official time usage. Further, Ms. Ings had not been consulted, or shown the promotion certifications issued for this position, in January, in February, or in March, 1995, when, on each occasion, the selectee had declined the position; that it was only when Ms. West, on the April certification, was first on the Best Qualified list that she was shown the promotion certification and, upon seeing the list, with Ms. West first, she said she did not want to make a selection because she already had someone acting that she was comfortable with and it was peak season and didn't have time to train someone else for the position. In fact, the person Ms. Ings claimed was acting as her lead examiner, and with whom she was comfortable, was not acting as lead examiner and her assertion about it being peak season was wholly pretextual. Ms. Ings had made it clear when she counseled Ms. West in 1994, that her, West's, traveling on "some type of task force" (Tr. 49) interfered with her performance and that her traveling status put a hardship on her, Ings', unit because she, Ings, always had to get somebody to do her, West's, work (Tr. 58). Ms. Ings, at the February, 1995, grievance meeting on Ms. West's grievance, again said that Ms. West's, ". . . travel status did put a hardship on me and my unit because . . . I always had to get somebody to complete Solone's work." (Tr. 58), and, it seems apparent, that Ms. Ings' real reason for refusing to select Ms. West was Ms. West's usage of official time which she plainly stated, "put a hardship on me and my unit". Therefore, I conclude that Respondent violated §§ 16(a)(1) and (2) of the Statute by its failure and refusal to promote Ms. West on April 5, 1995. I further find that, but for her engaging in protected activity, Ms. West would have been selected on April 5, 1995, for promotion to Lead Tax Examining Clerk, GS-6. The record shows that Ms. West was a good and productive employee as she received a performance award in 1994; she had about 10 years experience with Respondent and had been a GS-5 Tax Examiner for about five years; she was on the Best Qualified list for this position four consecutive times and was first on the April 5, 1995, Best Qualified list; and Respondent had consistently, until Ms. West topped the Best Qualified list, picked the person highest on the list. The vacancy remained, required filling and was filled a short time later.

Because, as fully set forth above, I have found that Ms. Ings did not tell Ms. West in January, 1995, that she was not selected because she was away from work too much, I do not find an independent violation of § 16(a)(1) of the

Statute and the allegations Paragraphs 22 and 26 of the Complaint are dismissed.

Having found that Respondent violated §§ 16(a)(1) and (2) of the Statute by its failure and refusal to promote Ms. West on April 5, 1995, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18, of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Internal Revenue Service, Philadelphia Service Center, Philadelphia, Pennsylvania, shall:

1. Cease and desist from:

(a) Discriminating against its employees by denying them promotional opportunities because they have used official time or have engaged in any other protected activity on behalf of the National Treasury Employees Union, the exclusive representative of its employees.

(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:

(a) Make whole Ms. Solone A. West by retroactively promoting her to the position of Lead Tax Examining Clerk, GS-6, to April 5, 1995, and awarding her back pay and allowances equal to that which she would have earned in this position from April 5, 1995, to the date of her promotion, less that compensation she has received during this period as a Tax Examiner, GS-5.

(b) Post at its facilities at the Philadelphia Service Center, Philadelphia, Pennsylvania, 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 Director of the Philadelphia Service Center, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to § 2423.30, of the Authority's Rules and Regulations, 5 C.F.R., § 2423.30, notify the Regional Director of the Boston Region, Federal Labor Relations

Authority, 99 Summer Street, Suite 1500, Boston, MA

02110-1200, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 23, 1997
Washington, DC

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Internal Revenue Service, Philadelphia Service Center, Philadelphia, Pennsylvania, 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 discriminate against our employees by denying them promotional opportunities because they have used official time or have engaged in any other protected activity on behalf of the National Treasury Employees Union, the exclusive representative of our employees.

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.

WE WILL make whole Ms. Solone A. West by retroactively promoting her to the position of Lead Tax Examining Clerk, GS-6, to April 5, 1995, and WE WILL award her back pay and allowances equal to that which she would have earned in this position from April 5, 1995, to the date of her promotion, less that compensation she has received during this period as a Tax Examiner, GS-5.

Internal Revenue Service
Philadelphia Service
Center

Date:

By:

(Signature) (Director)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Boston Region, whose address is: 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, and whose telephone number is: (617) 424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. BN-CA-50594, were sent to the following parties in the manner indicated:

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Dated: April 23, 1997
Washington, DC