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

SOCIAL SECURITY ADMINISTRATION ALBUQUERQUE, NEW MEXICO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 4041 Charging Party	Case Nos. DA-CA-90509 DA-CA-90515

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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MAY 24, 2000**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW., Suite 415
Washington, DC 20424-0001

ELI NASH, JR.
Administrative Law Judge

Dated: April 24, 2000
Washington, DC

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

MEMORANDUM DATE: April 24, 2000

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
ALBUQUERQUE, NEW MEXICO

Respondent

and Case Nos. DA-CA-90509

DA-CA-90515

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 4041

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.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ

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WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION ALBUQUERQUE, NEW MEXICO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 4041 Charging Party	Case Nos. DA-CA-90509 DA-CA-90515

Cathy M. Six, Esquire
For the Respondent

Denyce E. Lemons, Esquire
John E. Bates, Esquire
For the General Counsel

Before: Eli Nash, Jr.
Administrative Law Judge

DECISION

Statement of the Case

These consolidated cases arose under the Federal Service Labor-Management Relations Statute (the Statute), and the revised Rules and Regulations of the Federal Labor Relations Authority (the Authority).

Based upon unfair labor practice charges filed on May 18, 1999 and first amended on September 22, 1999 and September 30, 1999, respectively, by the American Federation of Government Employees, Local 4041 (Union), against the Social Security Administration, Albuquerque, New Mexico (Respondent), a Consolidated Complaint and Notice of Hearing

issued on September 30, 1999. The Consolidated Complaint alleges that the Respondent failed to comply with provisions of section 7114(a)(2)(B) of the Statute by: (1) holding investigatory examinations of two bargaining unit employees; (2) the employees reasonably believed it might result in disciplinary action against them; and (3) not providing the employees with Union representation as requested, and thereby violated section 7116(a)(1) and (8) of the Statute.

A hearing was held in Albuquerque, New Mexico, on December 14, 1999, at which time all parties were represented and afforded a full opportunity to be heard, adduce relevant evidence, and examine and cross-examine witnesses. Counsel for the Respondent and the General Counsel filed timely
post-hearing briefs.

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

Findings of Fact

The Respondent is an agency under section 7103(a)(3) of the Statute. The Union is a labor organization within the m eaning of section 7103(a)(4) of the Statute. The Union is the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent's facility.

A. Case No. DA-CA-90509

Sometime around February 2, 1999[1] bargaining unit employee Nieves Trujillo, was finishing her lunch at around 3:00 p.m. when her supervisor, Colin DeGattis, told her that he needed to talk to her about her leave usage and to meet him at his cubicle. At that point, Trujillo became scared because she didn't know what was going to happen. Trujillo had been placed on two leave restrictions by DeGattis prior

[1] All dates in these consolidated complaints are 1999, unless otherwise noted.

to this time and she was wondering what it was that she had done this time. Trujillo followed DeGattis to his cubicle, where they sat down. DeGattis had sheets of papers and leave restriction papers in front of him. Trujillo testified that she immediately asked for a Union representative because she believed that she would be reprimanded due to prior leave restrictions she had received from DeGattis. According to Trujillo, DeGattis responded that she was not going to have a Union representative that day because he had read the contract and she was not going to have a Union representative. Trujillo says that she was surprised by this statement because she thought that was one of her rights.

DeGattis then looked over the sheets of paper in front of him and started talking about the leave restrictions and asking Trujillo questions about certain days on the restrictions. DeGattis did not give Trujillo the sheets of paper at that time. Trujillo stated that DeGattis asked her why she could not schedule her appointments before her tour of duty. Trujillo responded that she did not have control over certain appointments or certain things that happened.

Trujillo further testified that DeGattis asked if she wouldn't like to save her leave for a vacation one day. According to Trujillo, she responded that she would like to, but unfortunately there were many things that happened with her, her immediate family and outside her family with which she had to help out. Trujillo continued that DeGattis asked Trujillo why she could not get something every time she went to the doctor, what was wrong. According to Trujillo, DeGattis asked why she would be late, if it was just half an hour and what was the reason for it. Trujillo testified that DeGattis continually kept asking her questions along this line and asking her if she didn't think this was the best thing he could do to help her out. Trujillo replied that a lot of these things couldn't be helped. Trujillo stated that at the end of this meeting, which took approximately 20 to 30 minutes, DeGattis asked her to sign the leave restrictions notice, which she did to indicate she had received a copy of it. Trujillo testified that based on her experiences with DeGattis, from whom she had received

two prior leave restrictions, she believed this could lead to disciplinary action.

When Trujillo was questioned about another meeting taking place on January 20, 1999, and whether it was at the January 20, 1999, meeting when DeGattis asked her questions rather than at the February 2, 1999 meeting, Trujillo testified that although it was possible there had been a January 20, 1999 meeting, DeGattis did ask her those questions at the February 2, 1999 meeting, which she could recall very well. Trujillo testified that DeGattis asked her questions about her life and her leave at every meeting.

DeGattis confirmed that he met with Trujillo on February 2. DeGattis stated that the purpose of the meeting was to give Trujillo a copy of the leave restriction memorandum that he had prepared and to try to make sure that she understood what was contained in the leave restrictions. DeGattis testified that he had an earlier interview with Trujillo on January 20, and that as a result of that meeting he began to prepare a leave restriction memorandum that he gave to Trujillo on February 2. DeGattis denied asking Trujillo any questions about her leave usage on February 2, but stated that he did ask questions during the January 20 interview that were similar in nature to the questions Trujillo says he asked on February 2. Trujillo admitted that DeGattis "already knew what my situations were at that time . . . ." Tr. at 15. DeGattis opined that the January 20 meeting was investigatory in nature. DeGattis denied that Trujillo asked for representation at any of their meetings regarding leave restrictions. He also testified, however, that he would not have allowed Trujillo union representation at the February 2 meeting.

DeGattis further denied that he questioned Trujillo during the February 2 meeting. DeGattis testified that he gave Trujillo a copy of the leave restriction memorandum during the meeting and that initially she refused to sign the memorandum. DeGattis also stated that after he explained that her signature meant only that she had received the memorandum, Trujillo then signed the memorandum. DeGattis added that the intent of the meeting

was merely to give the memorandum to Trujillo and to answer any questions that she might have about the leave restrictions.

B. **Case No. DA-CA-90515**

On or about March 25, 1999, Laura Megah, a bargaining unit employee, had a disagreement with her supervisor, Marleon Redden, over how to help one of Megah's telephone customers. Megah and Redden both got upset and angry over the phone call with the customer. After Megah was finished with the phone call, Redden told her that they were going to have a meeting about the incident after lunch. Megah went to lunch and thought about the phone call and how Redden had referred to it as "the incident," which scared Megah. Megah testified that this scared her because she thought she had been doing her job and didn't realize that it was an "incident." When Megah returned from lunch, Redden came to Megah's desk and said they were going to the Section Manager's Office, Dora Dominguez. Megah told Redden she did not want to go and that she wanted a Union representative. Redden told Megah that she couldn't get a Union representative. According to Megah, she followed Redden to Redden's desk where Redden picked up a notebook that she keeps her personal or jogger notes in.

Megah testified that she had always done a good job, receiving awards and excellent or outstanding ratings. However, since she had been in Redden's unit she had been written up twice for what she believed were trivial matters related to a leave issue and for reading at her desk. When Megah saw Redden pick up her notebook, she feared that she was going to be written up and again told Redden that she did not want to go to Dominguez' office and that she wanted a Union representative. Redden told Megah that she didn't need a Union representative and pulled out a little black book, which Megah believes is the Supervisor's Book of Rules, at which point Megah told Redden that she did not want to see Redden's rules and that she wanted a Union representative. Megah then testified that she panicked and went looking for Cynthia Maestas, a Union steward who had represented her previously, but she was unable to find

Maestas. At that point, Megah went to Dominguez' office with Redden.

Megah stated that she repeated her request for a Union representative once in Dominguez' office. According to Megah, Redden responded that Megah could not have a Union representative because it wasn't a formal reprimand. Megah testified that she did not believe Redden because Redden had her notebook with her and Megah's experience of being written up on two previous occasions involved Redden using her notes to quote things Megah had said. Megah testified that, in her experience, Redden used the words she said during these types of meetings against her at a later date. Megah also testified that even if Redden did not write her up for this specific incident, Megah believed that if she ever questioned Redden again in the future, Redden would use this incident against her as Redden had done in the past.

During the meeting, which lasted approximately 20-30 minutes, Redden asked Megah why she would question what she was told to do. Megah replied that she felt Redden was wrong in her decision. According to Megah, Redden told Megah that she was not to question Redden again. Redden then asked Megah why she felt her way of handling the phone call was better than Redden's, and Megah responded by explaining her reasoning. Redden then wanted to know why Megah had asked for a second opinion that morning. Megah responded that Redden had just told her earlier that day that if she was ever uncomfortable she could ask for a second opinion. Redden told Megah that she was never to challenge her again. Megah also testified that during the time she was responding to Redden's questions, Redden was writing in her notebook, which led her to think she was going to be disciplined and that it was going to come back at her because Redden had written her up before.

Redden admitted that she told Megah that if she behaved like this in the future that there would be consequences. Further, Redden admitted that she told Megah that there was no need to go to the Union's office as it was not a Union matter. Although Redden initially testified that she did not ask Megah any questions during this

meeting, on cross-examination Redden testified that she *did* ask Megah why she behaved the way she did.

A grievance was filed on March 25, regarding the underlying incident, but did not involve an allegation that Megah had been denied Union representation.

Conclusions

A. Was There a Statutory Right to Union Representation Under the Circumstances Set Forth in These Consolidated Cases?

Section 7114(a)(2)(B) of the Statute sets forth what is commonly referred to as the "Weingarten" provisions.[2] That section describes the specific circumstances under which an employee has a statutory right to union representation. Under section 7114(a)(2)(B), there are four elements which must be present for the right to union representation to attach. Thus, there is no absolute right to have a union representative present, even during a "Weingarten" investigation. The right is limited unless these four elements are met. First, there must be an "examination" of the employee. Second, the examination must occur "in connection with an investigation." Third, the employee must "reasonably believe" that the examination may result in disciplinary action against him or her, and finally, the employee must request union representation. All four of these elements must be present before a statutory right to union representation attaches. *See American Federation of Government Employees, Local 1941, AFL-CIO v. FLRA*, 837 F.2d 495, 498 (D.C. Cir. 1988); *Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 29 FLRA 594, 602 (1987). The undersigned believes that this analysis applies to both of these consolidated cases. Whether the above four elements were met in these cases is considered below.

B. Case No. DA-CA-90509

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[2] These provisions reflect the Supreme Court's decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

1. Trujillo did not request union representation

The right to union representation under section 7114(a)(2)(B) will affix itself only if a valid request for such representation is made. This requirement has been upheld by the Authority in numerous prior decisions. *See, Norfolk Naval Shipyard, Portsmouth, Virginia,* 35 FLRA 1069, 1073-74 (1990)(*Norfolk Naval Shipyard*). It has also been held that the request must be sufficient to put the agency on notice of the employee's desire for representation. It is uncontroverted that Trujillo "immediately asked for a Union representative" on February 2. It is worthy of note, however, that in previous discussions with DeGattis over leave restrictions she never asked for union representation. Although Trujillo's failure to ask for representation in previous leave matters does not dispose of the issue herein, the undersigned finds this failure significant, in deciding her overall credibility concerning the February 2 meeting.

Accordingly, and based on findings with regard to whether an examination in connection with an investigation occurred in the February 2 meeting, I find that Trujillo did not request a Union representative for this meeting and even assuming that she did, there was no right to such representation.

2. There was no examination of Trujillo

It has long been established that a meeting which is conducted by management for the sole purpose of informing an employee of a decision that has already been reached is not an "examination" for purposes of section 7114(a)(2)(B). *United States Air Force, 2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 9 FLRA 871 (1982). *See also Department of the Navy, Norfolk Naval Base, Norfolk, Virginia*, 14 FLRA 731, 749 (1984). This approach is consistent with the rulings of the National Labor Relations Board on this same issue. *See, Baton Rouge Water Works Company*, 246 NLRB 995 (1979)(*Baton Rouge*).

The record reflects that the meeting of February 2 was conducted solely for the purpose of issuing Trujillo a leave

restriction memorandum that DeGattis had already prepared. Thus, the decision to issue a notice of leave restriction in Trujillo's case was made before the meeting began. DeGattis' testimony reveals that prior to February 2, he had several other meetings with Trujillo in which her leave usage was discussed. His testimony also discloses that the last meeting took place on January 20, 1999, shortly before the interview in question. At the January 20 meeting, Trujillo did not request representation and DeGattis without a Union representative, asked her questions concerning the reasons for her absences and apparently counseled her about scheduling her appointments prior to her shift and about saving her leave for a vacation.

Although it is certain that some conversation did occur on February 2, DeGattis recalls that any questioning of Trujillo about her leave usage took place during January 20 rather than at the February 2 meeting. The fact that a conversation occurs need not automatically convert a meeting into an "examination" triggering Weingarten rights, however. *See Baton Rouge,* 246 NLRB at 997; *see also United States Air Force, 2750th Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 10 FLRA 97, 108-09 (1982). A Weingarten right attaches only where an agency, after informing the employee of the disciplinary decision, seeks additional facts or evidence in support of the action or attempts to have the employee admit his or her wrongdoing. If, however, as in the instant case, some conversation occurs, but the agency is only concerned with the administration of the leave restriction and is not seeking additional evidence in support of its action, no Weingarten right would attach. *Texaco, Inc.*, 246 NLRB 1021 (1979). The determining question in these cases is whether the agency is concerned with the administration of discipline or whether it is seeking to obtain facts, evidence or an admission in support of the disciplinary action. *Baton Rouge, supra.* Case law thus reveals that an agency is not required to remain absolutely silent when presenting a proposal for discipline or in this case a leave restriction memorandum, but restraints are placed on what an agency can talk about in such situations. Trujillo candidly testified that DeGattis "already knew what my situations

were at that time . . . .” In my view, this makes it far less likely that DeGattis was investigating Trujillo’s leave usage during the February 2 meeting. Thus, the circumstances indicate that the Respondent did not exceed the prescribed limits at the February 2 meeting.

Based on the foregoing, it is found that the meeting of February 2 was not an examination, as the meeting was conducted solely for the purpose of issuing a previously prepared leave restriction memorandum to Trujillo. Moreover, the fact that a conversation ensued, did not automatically convert the meeting into an examination triggering the right to representation.

Accordingly, since no examination occurred, it is found that this element of section 7114(a)(2)(B) has not been met.

3. The February 2 meeting was not “in connection with an investigation”

The second element necessary for a right to union representation to attach under section 7114(a)(2)(B) is that the examination must be “in connection with an investigation.” The Authority has found that an examination is “in connection with an investigation,” if its purpose is “to obtain the facts” and “determine the cause” of an incident. *U.S. Immigration and Naturalization Service, U.S. Border Patrol, Del Rio, Texas,* 46 FLRA 363, 372 (1992). Thus, it appears that an agency must be attempting to “elicit answers to a work-related matter” by making specific inquiries such as who, what, when, and how.

As already noted, the meeting of February 2 was not an “examination.” Additionally, the undersigned agrees with Respondent that the meeting was not “in connection with an investigation.” There is clearly no entitlement to union representation where a meeting is called solely to inform an employee of a disciplinary decision previously made and to determine whether the employee understands why discipline is being imposed. In this case, a conclusion that DeGattis’ remarks involved the latter would not be unreasonable.

Based on the foregoing, it is found that the meeting of February 2 was not in connection with an investigation.

4. Trujillo could not have "reasonably believed" that disciplinary action might result from the February 2 meeting

It is undisputed that the "reasonably believes" element of section 7114(a)(2)(B) is an objective standard. The relevant inquiry is whether, in light of the external evidence, a reasonable person could conclude that disciplinary action might result from an examination. *See, Internal Revenue Service, Washington, DC and Internal Revenue Service, Hartford District Office*, 4 FLRA 237 (1980) *aff'd sub nom. Internal Revenue Service, Washington, DC and Internal Revenue Service, Hartford District Office v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982)(*IRS*). *See also American Federation of Government Employees, Local 2544 v. FLRA*, 779 F.2d 719 (D.C. Cir. 1985)(AFGE, Local 2544).

In *AFGE 2544 v. FLRA*, the court held that:

> The FLRA has consistently interpreted § 7114(a)(2)(B) to say that a right to union representation exists whenever the circumstances surrounding an investigation make it reasonable for the employee to fear that his answers might lead to discipline. The *possibility*, rather than the *inevitability*, of future discipline determines the employee's right to union representation. *See e.g., IRS v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982), *aff'g*, 4 FLRA 237 (1980)(risk of discipline even though employee interviewed was not the subject of the investigation). . . .
>
> The FLRA has also defined the "reasonably believes" requirement . . . as an objective standard. The relevant inquiry is whether, in light of the *external* evidence, a reasonable person would decide that disciplinary action might result from the examination.

779 F.2d at 723-24 (emphasis in original).

In this case, although it is abundantly clear that Trujillo believed that the meeting with DeGattis could result in disciplinary action, it is the opinion of the undersigned, that the sum of the external evidence establishes that such a belief was not "reasonable."

Assuming *arguendo* that the February 2 meeting involved an examination and was in connection with an investigation, under the circumstances presented, it is my view that a reasonable person could not conclude that disciplinary action might result from the meeting. Where an employee is informed that the purpose of a meeting is simply to perform a ministerial act such as issuing a leave restriction memorandum, a reasonable person would not conclude that attendance at, and participation in, such a meeting might form the basis of disciplinary action. While the individual may have a subjective belief that attendance at such a meeting might result in further disciplinary action, the undersigned concludes that such a belief was not objectively reasonable in this case. Furthermore, the record establishes that Respondent's decision to issue the leave restriction memorandum to Trujillo prior to the February 2 meeting had been made prior to the meeting.

Although Trujillo may have believed that her attendance at, and participation in, the February 2 meeting might result in disciplinary action, it is found that such a belief was not reasonable. Accordingly, another element of section 7114(a)(2)(B) has not been met.

In summary, I find that all the necessary elements of section 7114(a)(2)(B) were not satisfied in this matter. Accordingly, it is found that Respondent did not fail to comply with section 7114(a)(2)(B) of the Statute when it refused to allow Trujillo to have a Union representative present when she met with DeGattis at the February 2 meeting.

C. **Case No. DA-CA-90515**

1. Megah did request union representation

Respondent claims that Megah did not request Union representation and that even if she had, she was not entitled to representation since Redden told her that she was not going to take disciplinary action regarding the incident in question.[3] Respondent also argues that Redden's testimony is more credible than Megah's. Redden's testimony clearly contains several inconsistencies which require the undersigned to give greater weight to Megah's testimony.

Megah's testimony established that she requested Union representation *four times* prior to the start of the meeting on the afternoon of March 25. In this regard, it is clear that a request for union representation need not be made in a specific form in order to be valid. The request, must be sufficient to put the agency on notice of the employee's desire for representation, however. *Norfolk Naval Shipyard,* 35 FLRA at 1073-78. Megah's testimony notwithstanding, Redden claims that Megah never asked for a Union representative, but only asked to go to the Union's office in two meetings that day. Thus, even Redden recognizes that a request for representation was made and that request, in my view was sufficient to put Redden on notice that Megah was seeking Union representation or the assistance of a Union representative for this meeting. Furthermore, Redden testified that Megah stated that she felt threatened by what Redden said and wanted to go to the Union's office, but Redden suggested that this was not a Union matter. Consequently, Redden's testimony alone reveals that Megah asked to go to the Union's office which should have been adequate notice to Redden that Megah wanted Union representation. After Megah put Redden on notice that she desired Union representation, Redden had three choices: (1) grant the request; (2) discontinue the interview; or (3)

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[3] With respect to any argument that Megah never mentioned the failure to be provided Union representation in her grievance of March 25, 1999, the Union is allowed to choose the forum in which to bring its charges under the Statute. It appears to the undersigned that the Union made a conscious choice not to include the issue in the grievance in order to preserve the representation question for determination in an unfair labor practice forum.

offer the employee the choice between continuing the interview without representation or having no interview at all. *Id.* at 1077. Redden did none of the above, but instead told Megah that this was not a Union matter and that this was Megah's behavior and Megah had to deal with it.

As already noted, the right to union representation exists whenever the circumstances surrounding an investigation make it reasonable for the employee to fear that his answers might lead to discipline. The possibility, rather than the inevitability, of future discipline determines the employee's right to union representation. *See e.g., IRS,* 671 F.2d at 560 (risk of discipline even though employee interviewed was not the subject of the investigation). Also noted, is the Authority's definition of what constitutes "reasonably believes" and the objective standard used to make that determination. The relevant inquiry is whether, in light of the *external* evidence, a reasonable person would decide that disciplinary action might result from the examination.
AFGE, Local 2544, 779 F.2d at 723.

Respondent suggests that even if Megah requested Union representation it was unnecessary because Redden told Megah that she was not going to take disciplinary action regarding the incident. Megah recognized that Redden told her that she was not going to take any disciplinary action based on the incident that she wanted to discuss with Megah. Indeed, a grant of immunity may eliminate reasonable fear of discipline. *U.S. Department of Justice, Office of the Inspector General, Washington, DC and United States Immigration and Naturalization Service, El Paso, Texas*, 47 FLRA 1254 (1993). Despite the fact that Redden told Megah that she would not be disciplined, Redden allowed that she told Megah that her behavior was inappropriate and unacceptable, and that if this happened again in the future there would be consequences. Thus, Megah's fear was not ameliorated by Redden's promise. Moreover, in my view, Redden's statement rather than alleviating the likelihood that future disciplinary action could be based on this meeting, raised such a possibility. Therefore, Redden's

statement could not be understood as offering any protection for Megah.

Accordingly, it is found that Megah did request Union representation for the March 25 meeting.

2. There was an examination in connection with an investigation

It is undisputed that Redden asked Megah questions about her behavior and why Megah had questioned Redden's authority. Further evidence of Redden's inconsistent testimony is shown when Redden initially denied asking Megah any questions during the meeting, but later conceded that she *did* ask Megah about her behavior earlier that day. Conversations that change into questions concerning an employee's duties or employment readily qualify for examination status. *Social Security Administration, Baltimore, Maryland*, 19 FLRA 748 (1985)(ALJ Decision). Redden's asking Megah about her behavior and warning Megah not to question her authority, warrant a finding that questions were asked about Megah's employment and duties.

Accordingly, it is found that the March 25 meeting constituted an examination in connection with an investigation.

3. Megah could reasonably believe that disciplinary action might result from the March 25 meeting

Redden acknowledged that Megah told her she felt threatened by what Redden was saying. Megah also testified that Redden was taking notes during their conversation concerning Megah's behavior earlier that day and that, in the past, Redden had issued Megah reprimands which included quotes from Megah from their prior conversations about other incidents. Also Megah testified that although Redden said that she was not going to write her up for this specific incident, but that if Megah ever questioned Redden again, she believed Redden would come back and use that against her at a later date. In my opinion, it was reasonable for Megah to believe that if Redden was not planning to use the information to base a future disciplinary action on, then it

would not have been necessary for Redden to take notes of what was occurring. The clear inference here is that what Megah was saying could be used against her in the future. Megah therefore recognized the possibility that future disciplinary might result from this meeting. Although Redden denied having a notebook or taking notes during the meeting, I credit Megah. Furthermore, it is clear that Redden used a notebook in the past to write down what Megah was saying and used those notes to write Megah up. In light of the circumstances leading up to the examination and the examination itself, a reasonable person could believe that questions concerning her earlier behavior might lead to discipline in the future. Therefore, it is concluded that the meeting was an investigatory examination where Megah requested Union representation because she "reasonably believed" that the examination might result in disciplinary action against her at some future time. Accordingly, it is found that Respondent failed to comply with section 7114(a)(2)(B), thereby violating section 7116(a)(1) and (8) of the Statute.

Based upon the foregoing, it is found that a preponderance of the evidence establishes that the Respondent violated section 7116(a)(1) and (8) of the Statute on March 25, 1999, when it held an investigatory examination of bargaining unit employee Laura Megah without providing her with Union representation, as requested. Further, it is found that a preponderance of the evidence does not establish that Respondent violated section 7116(a)(1) and (8) of the Statute on February 2, 1999, when it held a meeting to provide employee Nieves Trujillo with a leave restriction memorandum without providing her with Union representation, as requested.

Accordingly, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations, and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered

that the Social Security Administration, Albuquerque, New Mexico, shall:

· Cease and desist from:

(a) Requiring any bargaining unit employee of the Social Security Administration, Albuquerque, New Mexico, represented by the American Federation of Government Employees, Local 4041, to take part in any examination in connection with an investigation, without union representation when such representation has been requested by the employee and the employee reasonably believes that the examination may result in disciplinary action against him or her.

(b) In any like or related manner, interfering with, restraining, or coercing 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) Provide any bargaining unit employee of the Social Security Administration, Albuquerque, New Mexico, in the bargaining unit represented by the American Federation of Government Employees, Local 4041, union representation when requested, in accordance with section 7114(a)(2)(B) of the Statute, at any examination of employees.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 4041 are located, 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 Social Security Administration, Albuquerque, New Mexico, 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.

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

It is further Ordered that the complaint in Case No. DA-CA-90509, be and it is, hereby dismissed.

Issued, Washington, DC, April 24, 2000.

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ELI NASH, JR.
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 Social Security Administration, Albuquerque, New Mexico, 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 require any bargaining unit employee of the Social Security Administration, Albuquerque, New Mexico, represented by the American Federation of Government Employees, Local 4041, to take part in any examination in connection with an investigation without union representation when such representation has been requested by the employee and the employee reasonably believes that the examination may result in disciplinary action against him or her.

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 provide any bargaining unit employee of the Social Security Administration, Albuquerque, New Mexico, represented by the American Federation of Government Employees, Local 4041, union representation when requested, in accordance with section 7114(a)(2)(B) of the Statute, at any examination of employees.

_____

(Respondent/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 directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 Griffin Street, Suite 926, Dallas, Texas 75202 and whose telephone number is: (214)767-6266.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by ELI NASH, JR., Administrative Law Judge, in Case Nos. DA-CA-90509 & DA-CA-90515, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT — **CERTIFIED NOS:**

Denyce Lemons-Elftman, Esquire — P168-060-174
John Bates, Esquire
Federal Labor Relations Authority
525 Griffin Street, Suite 926
Dallas, TX 75202

Catherine Six, Esquire — P168-060-175
SSA, LM&ER, Rm. G-F-10
6401 Security Blvd.
Baltimore, MD 21235

Kenneth Martin, Esquire — P168-060-176
SSA, ATSC
933 Bradbury Street, SE
Albuquerque, NM 87106

REGULAR MAIL:

Cynthia Maestas, Representative
Jim Red, Representative
AFGE, Local 4041
P.O. Box 9249
Albuquerque, NM 87106

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

_____
CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: APRIL 24, 2000
WASHINGTON, DC