

# FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE U.S. ATTORNEY'S  
OFFICE SOUTHERN DISTRICT OF FLORIDA WEST PALM BEACH,  
FLORIDA Respondent and AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, LOCAL 512 Charging Party

Case No. AT-CA-01-0381

Dexter A. Lee, Esquire For the Respondent  
Sylvia Acosta For the Charging Party Julie K. Anderson, 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.<sup>(1)</sup>, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent changed the duties of GS-8 Paralegal Assistants without providing the Union with notice and an opportunity to negotiate over the change in violation of §§ 16(a)(5) and (1) of the Statute.

This case was initiated by a charge filed on March 9, 2001; the Complaint and Notice of Hearing issued on July 31, 2001; and the hearing was set for October 16, 2001, pursuant to which, a hearing was duly held on October 16, 2001, in West Palm Beach, Florida, before the undersigned. At the conclusion of the hearing, November 16, 2001, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed a brief received on, or before, November 28, 2001.

On January 7, 2002, the President issued Executive Order No. 13252 exempting certain subdivisions of the Department of Justice from coverage under the Statute and on January 18, 2002, I issued a Notice to Show Cause Why This Case Should Not Be Dismissed. General Counsel responded on February 6, 2002, by facsimile mail, and Respondent responded on February 8, 2002, by facsimile mail. Charging Party, American Federation of Government Employees, Local 512, did not respond.

### CONCLUSIONS

§ 3(b)(1) of the Statute provides:

"(b) (1) The President may issued an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that --

"(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

"(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations." (5 U.S.C. §§ 7103(b)(1)).

President Bush exercised this authority on January 7, 2002, to exclude, inter alia, "United States Attorneys' Offices." The Executive Order provides as follows:

"Exclusions From the Federal Labor-Management Relations Program

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7103(b)(1) of title 5, United States Code, and in order to exempt certain subdivisions of the Department of Justice from coverage under the Federal Labor-Management Relations Program, it is hereby ordered as follows:

**"Section 1. Determinations.** The subdivisions of the Department of Justice set forth in section 2 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

**"Section 2. Amendment of Executive Order 12171.** Executive Order 12171 of November 19, 1979, as amended, is further amended by adding to the end of section 1-209 the following new subsections:

"(c) United States Attorneys' Offices.

. . . . ." (E.O. 13252, January 7, 2002; Fed. Reg., Vol. 67, No. 8, p. 1601)

Executive Order 12171, referred to in section 2 of Executive Order 13252, was issued by President Carter; Paragraph 1-2 is entitled, "Exclusions"; and E.O. 12171 is amended by inserting at the end of subsection 1-209 ["The Office of Enforcement and the Office of Intelligence, including all Domestic field offices and intelligence units, of the Drug Enforcement Administration, Department of Justice] the new subsections [(c) through (g)] including, specifically as pertinent here, "(c) United States Attorneys' Offices."

General Counsel in her response to the Notice to Show Cause asserted that, "The decisional component of the Federal Labor Relations Authority has issued similar show cause orders in four cases pending before it that

involve the United States Attorney's Office. In response to this Show Cause, the General Counsel respectfully requests that Administrative Law Judge defer his decision until the Authority has determined the status of those four cases. The General Counsel submits that deferral will promote judicial economy by avoiding potentially duplicative litigation and ensure consistency of result." (General Counsel's Response).

Respondent in his response stated, "Respondent believes the instant case should be dismissed for lack of jurisdiction. On January 7, 2002, the President signed Executive Order 13252, in which the United States Attorney's Offices were exempted from coverage under the Federal Labor-Management Relations Program. Therefore, the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101 et seq., no longer applies to the United States Attorney's Offices.

Accordingly, the complaint should be dismissed for lack of jurisdiction." (Respondent's Response, pp. 1-2).

I agree with Respondent. Nor is there any warrant to delay the disposition of this case because the Authority has already made clear that when a matter is removed from coverage under the Statute, here by E.O. 13252, the Authority lacks jurisdiction and the complaint must be dismissed. United States Department of Veterans Affairs, Veterans Affairs Medical Center, Asheville, North Carolina, 57 FLRA No. 137 (January 31, 2002).

Accordingly, because E.O. 13252 has excluded the United States Attorneys' Offices from coverage under the Statute, the Authority no longer has jurisdiction and it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. AT-CA-01-0381 be, and the same is hereby, dismissed.

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WILLIAM B. DEVANEY

Administrative Law Judge

Dated: February 21, 2002

Washington, D.C.

1.1/ 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 7103(b)(1) will be referred to, simply, as, "\$ 3(b)(1)."