UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE ARMY HQS, XVIII AIRBORNE CORPS AND FORT BRAGG FORT BRAGG, NORTH CAROLINA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1770 Charging Party	Case No. AT-CA-50913

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 **SEPTEMBER 9, 1996**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: August 8, 1996
Washington, DC

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

MEMORANDUM DATE: August 8, 1996

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE ARMY, HQS, XVIII AIRBORNE CORPS AND FORT BRAGG FORT BRAGG, NORTH CAROLINA

Respondent

and Case No. AT-CA-50913

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1770

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

DEPARTMENT OF THE ARMY HQS, XVIII AIRBORNE CORPS AND FORT BRAGG FORT BRAGG, NORTH CAROLINA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1770 Charging Party	Case No. AT-CA-50913

Michael T. Rudisill
Counsel for the Respondent

Ronald R. Katt
Representative of the Charging Party

Hazel E. Hanley
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), at some time after May 18, 1995 and before June 13, 1995, when the Respondent, through Supervisor David Coleman, bypassed the Union and dealt directly with a unit employee/grievant concerning a grievance filed by the Union on behalf of the employee.

Respondent's answer denied any violation of the Statute.

A hearing was held in Fayetteville, North Carolina. The parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs. Based on the entire record,[1] including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

On May 18, 1995, the Union, on behalf of Graham Renfrow, a member of the bargaining unit, filed a grievance with the Respondent concerning a locked gate which prevented Renfrow from reporting to work on time and the subsequent verbal abuse of Renfrow by his supervisor, David Coleman. The grievance named William B. Hall as the representative and point of contact for the Union.

The factual issue in dispute concerns a meeting between Supervisor Coleman and Mr. Renfrow sometime after May 18, 1995, but prior to June 13, 1995, during which a resolution of the grievance was allegedly discussed without a Union representative being on notice or present.

Supervisor Coleman testified that he was talking with Renfrow in his office when Renfrow started using several curse words. Coleman told Renfrow that he had filed a grievance because of Coleman's use of the same language. According to Coleman, Renfrow then replied that he had been thinking about that and was going to drop the grievance.

Mr. Coleman testified that it was never his intention to settle the grievance with Renfrow, but merely to make a point regarding the use of profanity in the workplace. Coleman testified that sometime later Renfrow again mentioned that he was dropping the grievance, at which time Coleman informed him that the Union had not dropped the grievance. According to Coleman, Renfrow said he would talk to the Union again.

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[1] Counsel for the General Counsel's unopposed motion to correct the transcript is granted; the transcript is corrected as set forth therein. Counsel for the General Counsel's motion to strike Respondent's brief as untimely filed is denied. Briefs were to "be placed in the mail on or before June 3rd, 1996." The certificate of service on Respondent's brief reflects that this was done.

Mr. Renfrow acknowledged that he told Supervisor Coleman that he was dropping the grievance, but only after they had discussed the matter and Supervisor Coleman had apologized for cursing and losing his temper. According to Mr. Renfrow, a day or two after filing the formal grievance, Supervisor Coleman asked Renfrow to step in his office. Coleman told Renfrow that he had heard that Renfrow had filed a grievance against him. When Renfrow acknowledged that was so, Coleman referred to an earlier one-on-one appraisal meeting they had a day or so earlier during which Renfrow had used curse words. According to Renfrow, he and Coleman then discussed the background issues of the grievance and, after about 30 minutes, Coleman apologized for cursing at Renfrow and losing his temper after the locked gate incident on May 1, 1995. Coleman continued to insist that, if the gate were locked, Renfrow should drive to the other gate, park, and walk to the shop. Finally, after further argument by Renfrow, that the gate should be unlocked for the oncoming shift, Coleman said he "would do his absolute best to make sure that the gate would be unlocked on time, and that we wouldn't have any further problems with the gate."

According to Renfrow, having Coleman's apology and assurances about the gate, he "felt at the time that [Coleman] was sincere in what he was saying, and I felt comfortable with it, and I told him that I would drop the grievance, and I did." Renfrow testified that he immediately informed Union shop steward Berkley that he was satisfied with what had happened in Coleman's office, including his apology, and wanted to drop the grievance.

Based on my observation of the witnesses and their demeanor, the arguments of counsel concerning their credibility, and all the evidence relating to the handling of the grievance in question, I credit the testimony of Mr. Renfrow. His testimony appeared to be sincere and straightforward and his explanations inherently probable given the total context of the situation.

Despite Mr. Renfrow's desire to drop the grievance, at a meeting with Respondent on June 13, 1995, during which the gate problem and Mr. Coleman's relationship with employees was discussed, Union president Bullard requested that a first step grievance meeting be held on the Renfrow grievance. At that meeting, on June 15, 1995, the new Union chief steward said that since the grievant was not present and wanted to drop the grievance, the Union would not pursue it.

By letter dated July 5, 1995, the Respondent advised Mr. Renfrow and his Union representative, in part, as follows:

> After reviewing the grievance and fully considering Union concerns raised by Mr. Bullard during the [June 13,1995] meeting, I have decided the remedial action sought in this grievance has been effected through Mr. Coleman's apology to you and Union concerns addressed during our meeting.

Discussion and Conclusions

In Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Region X, Seattle, Washington, 39 FLRA 298, 311 (1991) (SSA, Region X), the Authority set forth the following principles:

> Agencies unlawfully bypass an exclusive representa-tive when they communicate directly with bargaining unit employees concerning grievances, disciplinary actions and other matters relating to the collective bargaining relationship. See, for example, Depart-ment of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 35 FLRA 345 (1990) (McClellan Air Force Base). Such conduct constitutes direct dealing with an employee and is violative of section 7116(a)(1) and (5) of the Statute because it interferes with the union's rights under section 7114(a)(1) of the Statute to act for and represent all employees in the bar-gaining unit. Such conduct also constitutes an independent violation of section 7116(a)(1) of the Statute because it demeans the union and inherently interferes with the rights of employees to designate and rely on the union for representation. See, for example, id.; 438th Air Base Group (MAC) McGuire Air Force Base, New Jersey, 28 FLRA 1112 (1987) (McGuire Air Force Base); Social Security Administration, 16 FLRA 434 (1984).

The Respondent, by Supervisor David Coleman, unlawfully bypassed the Union by meeting with bargaining unit employee Graham Renfrow sometime after May 18, 1995, but prior to June 13, 1995, and dealing with Renfrow directly concerning his May 18, 1995 grievance without affording the Union

notice and an opportunity to be represented. Consistent with SSA, Region X, the Respondent's conduct interfered with the Union's rights under section 7114(a)(1) to act for and represent all employees in the bargaining unit, and thereby violated section 7116(a)(1) and (5) of the Statute. By the same conduct, the Respondent demeaned the Union and inherently interfered with the rights of employees to designate and rely on the Union for representation, and thereby independently violated section 7116(a)(1) of the Statute. See also U.S. Department of Justice, Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas, 51 FLRA 1339 (1996) (FCI, Bastrop) (unlawful bypass found citing SSA, Region X principles).

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order which is consistent with the remedy afforded by the Authority in SSA, Region X and FCI, Bastrop and which it is believed will effectuate the purposes and policies of the Statute in this instance2:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Army, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina shall:

1. Cease and desist from:

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2 Counsel for the General Counsel requested that the Respondent be ordered to schedule joint management/Union training in the Statute by an entity other than the Department of the Army or its agencies and that the official personnel file of Supervisor Coleman be annotated to reflect such training as a result of this violation. Counsel has not directed my attention to any decision where the Authority has concluded that the purposes of the Statute would be enhanced by such an order and notice in similar situations. However, the law in this area is not static and in United States Department of Justice, Immigration and Naturalization Service, 51 FLRA 914, 916 (1996), the Authority recently found that the purposes of a notice to bargaining unit employees would be enhanced by changing the customary notice and explicitly stating that the Authority found the Respondent to have violated the Statute.

(a) Failing and refusing to bargain in good faith with the American Federation of Government Employees, AFL-CIO, Local 1770 (the Union), the exclusive representative of certain of its employees, by bypassing the Union and communicating directly with a bargaining unit employee concerning a grievance.

(b) Interfering with the right of its employees to designate and rely on the Union to process their grievances through the negotiated grievance procedure.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Notify and give the Union an opportunity to be represented whenever any management official or supervisor intends to meet with a bargaining unit employee to discuss the subject matter or the resolution of any grievance being processed by the Union on behalf of the employee under the parties' negotiated grievance procedure.

(b) Post at its facilities at Fort Bragg, North Carolina, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Denver Region, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, August 8, 1996

GARVIN LEE OLIVER

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 Army, Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, North Carolina 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 and refuse to bargain in good faith with the American Federation of Government Employees, AFL-CIO, Local 1770 (the Union), the exclusive representative of certain of our employees, by bypassing the Union and communicating directly with a bargaining unit employee concerning a grievance.

WE WILL NOT interfere with the right of employees to designate and rely on the Union to process their grievances through the negotiated grievance procedure.

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

WE WILL notify and give the Union an opportunity to be represented whenever any management official or supervisor intends to meet with a bargaining unit employee to discuss the subject matter or the resolution of any grievance being processed by the Union on behalf of the employee under the parties' negotiated grievance procedure.

(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 of the Federal Labor Relations Authority, Denver Region whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204, and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. AT-CA-50913, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Michael T. Rudisill, Esq.
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Hazel E. Hanley
Counsel for the General Counsel
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1244 Speer Boulevard, Suite 100
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REGULAR MAIL:

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: August 8, 1996
Washington, DC