

<p>DEFENSE LOGISTICS AGENCY DEFENSE DISTRIBUTION REGION WEST STOCKTON, CALIFORNIA</p> <p>AND</p> <p>DEFENSE DISTRIBUTION REGION WEST DEFENSE DISTRIBUTION DEPOT OKLAHOMA TINKER AIR FORCE BASE, CALIFORNIA</p> <p>Respondents</p>	
<p>and</p> <p>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 916</p> <p>Charging Party</p>	<p>Case No. DA-CA-50226</p>

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 JUNE 3,
1996, 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 30, 1996
Washington, DC

MEMORANDUM

DATE: April 30, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEFENSE LOGISTICS AGENCY
DEFENSE DISTRIBUTION REGION WEST
STOCKTON, CALIFORNIA

AND

DEFENSE DISTRIBUTION REGION WEST
DEFENSE DISTRIBUTION DEPOT OKLAHOMA
TINKER AIR FORCE BASE, CALIFORNIA

Respondents

and

Case No. DA-

CA-50226

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 916

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

DEFENSE LOGISTICS AGENCY DEFENSE DISTRIBUTION REGION WEST STOCKTON, CALIFORNIA AND DEFENSE DISTRIBUTION REGION WEST DEFENSE DISTRIBUTION DEPOT OKLAHOMA TINKER AIR FORCE BASE, CALIFORNIA Respondents	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 916 Charging Party	Case No. DA-CA-50226

Preston L. Mitchell, Esquire
For the Respondent

Charlotte A. Dye, Esquire
For the General Counsel

Mr. Phil Porter
For the Charging Party

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 Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns, quite narrowly and quite specifically, whether the position of secretary to the Chief, Support Division, Defense Distribution Depot Oklahoma is that of a "confidential employee" within the meaning of § 3(a)(13) of the Statute.

This case was initiated by a charge filed on January 9, 1995 (G.C. Exh. 1(a)) alleging violations of §§ 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued on October 31, 1995 (G.C. Exh. 1(c)); alleged violations only of §§ 16(a)(1) and (5); and set the hearing for February 5, 1996, pursuant to which a hearing was duly held on February 5, 1996, in Oklahoma City, Oklahoma, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, March 6, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief received on, or before, March 11, 1996, which have been carefully considered. 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

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 (a)(13) will be referred to, simply, as "§ 3(a)(13)".

1. Without going into details, the Decision and Order on Petition for Clarification of Unit² in Department of Defense, Defense Logistics Agency, Case No. WA-CU-20915, January 11, 1993 (Res. Exh. 15, Attachment), notes that supply depots previously separately maintained by the Army, Navy, Air Force and Marine Corps were transferred to create the single Defense Logistics Agency (DLA).

2. DLA initially established three Regions: Defense Distribution Region West (DDRW); Defense Distribution Region East (DDRE); and Defense Distribution Region Central (DDRC) which included Oklahoma City (i.e., Defense Distribution Depot Oklahoma -- (DDO³) (Res. Exh. 15). In 1993, the Central Region was disbanded and DDO was moved to the Western Region (Tr. 139).

3. DDO is located at, and is a tenant of, Tinker Air Force Base (Tr. 153), and, as a tenant, is subject to the rules and regulations of Tinker Air Force Base (Tr. 154). In the transcript, reference to the "Commander" means the Commander of the Depot (DDO) -- not the Commander of Tinker Air Force Base (Tr. 188).

2

With respect to exclusions from the single, nation-wide bargaining unit for all DLA employees represented by the American Federation of Government Employees, the decision states, simply, "EXCLUDED: All professional employees, management officials, supervisors, and employees described in 5 USC 7112(B) 2, 3, 4, 6, 7." (Res. Exh. 15, Attachment) 5 U.S.C. § 7112(b) provides, as relevant,

"(b) . . . nor shall a unit be determined to be appropriate if it includes—

. . .

- (2) a confidential employee;
- (3) an employee engaged in personnel work in other than a purely clerical capacity;

. . . ."

(5 U.S.C. § 7112(B), (2) and (3)).

3

Respondent also refers to Defense Distribution Depot Oklahoma as: "DDOO". Following the practice of using the initial first letters, Defense Distribution Depot Oklahoma should have been "DDDO". Why one "D" was dropped and a second "O" was added was not made clear. Because "DDOO" is awkward, I have shortened the acronym to "DDO".

4. DDO is a subordinate part of Region West (DDRW), which is headquartered in Stockton, California, and Region West is a subordinate part of DLA, headquartered in Washington, D.C. (Res. Exh. 15; Tr. 137, 138, 139). Mr. Dean M. Boswell is Labor Relations Officer for DDRW (Tr. 137).

5. DDO was created in August, 1992, by the transfer of function and employees from the Air Force Logistics Command, Tinker Air Force Base to DLA (Tr. 92, 138). Mr. Bobby Hughes was Chief of Support Division DDO prior to Mr. Bill Watkins, i.e., Mr. Hughes was Chief of Support Division until about November 21, 1993; and was succeeded by Mr. Watkins on November 22, 1993 (Tr. 37).

6. DDO has about 800 employees (Tr. 138); is headed by a Commander and Deputy Commander (Tr. 188); and the Chief of Support Division, Mr. Watkins, is third in line of command and would be in charge of DDO in the absence of both the Commander and Deputy Commander (Tr. 189). Mr. Watkins, as Chief of Support Division is in charge of four Branches: computer systems (computer equipment and computer support) (Tr. 15); administrative support [XA] (budget, payroll, public affairs, training, mail, safety and personnel) (Tr. 15-16); discrepancies [XI] (reports of discrepancy) (Tr. 16); and distribution [XP] (distribution, transportation, receiving and storing) (Tr. 16). The Support Division, helps the Depot carry out its mission on a daily basis (Tr. 16).

7. Ms. Carmen T. Spiegel had worked at the Tracy Depot and the Sharp Depot in California (Tr. 13), and came to work in Oklahoma on November 1, 1993, as secretary in the Support Division (Tr. 15). Initially, Ms. Spiegel was secretary to Mr. Hughes, who was Chief of the Support Division when she arrived; and on November 22, 1993, three weeks later, Mr. Hughes was succeeded by Mr. Watkins (Tr. 36-37). Ms. Spiegel was Mr. Watkins' secretary from November 22, 1993, until April 17, 1995 (Tr. 15, 37), when she was detailed to Installation Services, where she worked from April, 1995, until August, 1995 (Tr. 14); then to Warehousing, where she worked from August 23, 1995, to September, 1995 (Tr. 14); and since September, 1995, has worked at Customer Assistance (Tr. 13). For paperwork purposes, Ms. Spiegel still occupies the position of Support Division secretary, although as noted, she has been detailed out of that position since April 17, 1995 (Tr. 15, 38). I have considered her testimony, as well as the testimony of all other witnesses, carefully and agree with Respondent that ". . . Ms. Spiegel was not forthcoming in divulging

the actual nature of her job duties" (Respondent's Brief, p. 2). Indeed, so pervasive was her purpose to conceal labor-management related activities that she was shown by her own testimony to have been untruthful. For example, she stated that she never typed anything for Mr. Watkins that related to labor-management matters (Tr. 27), but later admits that on August 22, 1995, she typed, "Bargaining Unit Evaluation/Determination" concerning her position as a confidential employee and the position of Ms. Diana Barnaba and Ms. Sherry Smith, as employees engaged in personnel work in other than a purely clerical capacity (Res. Exh. 10; Tr. 46); that she typed Mr. Watkins' memorandum of August 15, 1994 (Res. Exh. 8), concerning negotiations -- incredibly, Ms. Spiegel asserted that even though her initials are shown she did not necessarily type the letter (Tr. 49); that she typed Mr. Watkins' letter of January 25, 1995, to Union President Wallace inviting him, or his designee, to attend scheduled Commander's meetings; Mr. Watkins' letter of January 5, 1995, to Mr. Phillip Porter, Chief Steward (Res. Exh. 11) transmitting information requested by Mr. Porter (Res. Exh. 11, Attachment); and that she typed management's proposal in negotiations concerning a reduction in force (RIF) (Res. Exh. 2; Tr. 40, 41). With respect to the "Most Efficient Organization" -- "MEO", Ms. Spiegel first responded, "I don't know what you are talking about." (Tr. 74); then admitted that she had, ". . . heard of the acronym before" (Tr. 74); admitted she saw MEO on paperwork from DDRW (Tr. 82); and Ms. Donna Libel credibly testified that Ms. Spiegel updated a disc furnished by DDRW to reflect DDO's most efficient organization (Tr. 219-220). Accordingly, where there is any conflict of testimony concerning her duties, the testimony of Messrs. Boswell and Watkins, which I found to be entirely credible, will be credited and that of Ms. Spiegel will not be credited.

In about August or September, 1994, Mr. Watkins began handling grievances and Ms. Spiegel was instructed to start a log book on grievances, which meant that she had to read at least the cover letters to log in each grievance (Tr. 33, 58-59), set up a suspense file, wrote any notations Mr. Watkins told her to make (Tr. 65), sent the grievance to the employee's division (Tr. 33), and followed up to ensure that action was timely taken (Res. Exh. 12).

Ms. Spiegel took telephone messages for Mr. Watkins (Tr. 18) and, despite her denial (Tr. 55), I credit Mr. Boswell's testimony that he did leave messages with Ms. Spiegel concerning labor-management positions of DDO and

that if Mr. Watkins could not call back for her, Spiegel, to find out the information and call him (Tr. 159).

Ms. Spiegel typed labor-management related materiel for Mr. Watkins (Res. Exhs. 2, 8, 10, 11; Tr. 219-220). Ms. Spiegel's assertion that Mr. Watkins never told her she was in a confidential relationship (Tr. 35) is belied by the nature of her duties, but, more important, is contrary to Mr. Watkins' memorandum of August 22, 1994 (Res. Exh. 10), which Ms. Spiegel typed, which requested evaluation of her eligibility to remain in the bargaining unit because, ". . . In this position, she has access to many sensitive documents and information used in the division to formulate policy, or recommend changes to existing DDOO policies and procedures."

Ms. Spiegel has keys to Mr. Watkins' office and files, has responsibility to open the office in Mr. Watkins absence and unlock file cabinets to file material (Tr. 75). She also retrieves documents from Mr. Watkins' office; had access to grievance files, which were in a locked file cabinet in Mr. Watkins' office, because she had to, ". . . get into my files" (Tr. 76) during the day. She also had the responsibility to make certain that the files and Mr. Watkins' office were kept locked (Tr. 75).

Ms. Spiegel opened all mail and logged it in except mail marked "To be opened by the Addressee only" (Tr. 22), maintained suspense files for all correspondence requiring action (Tr. 22, 23).

Ms. Spiegel typed performance appraisals (Tr. 18); in addition to providing typing support for Mr. Watkins (Tr. 27), Ms. Spiegel checked correspondence from branch secretaries to be signed by Mr. Watkins, the Commander or Deputy Commander (Tr. 26); she did typing support for budget, payroll, OSHA reports, contracts, and personnel (Tr. 27).

Ms. Spiegel attended the weekly staff meeting that Mr. Watkins held with his branch chiefs (Tr. 28) and conceded that all sorts of problems were discussed (Tr. 23-31). Ms. Spiegel, in a three-way telephone conversation, was asked by Mr. Boswell about the impending RIF (Tr. 56).

Ms. Spiegel stated that Mr. Porter or Mr. Clayton Stasney came in the office now and then to see Mr. Watkins and, ". . . they would go into the office and close the door or they would go into the commander's conference room and close the door" (Tr. 31); and she knew Mr. Watkins sat in

the negotiating meetings with Boswell, Ms. Cathy Brown, Mr. Jim Usher, Mr. Porter, Mr. Stasney, the Commander and Deputy Commander (Tr. 42); and that she typed proposals on the second day of the meeting (Tr. 42; Res. Exh. 2).

From April, 1995, following Ms. Spiegel's detail elsewhere, Ms. Jean Ross, a secretary in Installation Services (Tr. 126), was detailed for four months as secretary to Mr. Watkins, *i.e.*, from April to August, 1995 (Tr. 127). Ms. Ross stated that she typed material on labor-management matters for Mr. Watkins (Tr. 128), including a letter, ". . . to the union on safety-toes boots" (Tr. 129), and material on the RIF which, Mr. Watkins reminded, was confidential (Tr. 130-131); that she logged-in grievances and gave them to Mr. Watkins (Tr. 131); that she suspended them and sent them to where the employee worked (Tr. 131); and that she assumed Mr. Watkins advised higher management on labor-management matters because he got calls from the personnel department in California (Tr. 132).

Mr. Porter conceded he had met with Mr. Watkins informally on labor-management matters (Tr. 96) and had met with him concerning implementation of the supplement negotiated by DDRW, specifically the safety shoe issue (Tr. 96, 97-122). Mr. Porter stated that ". . . I am aware that he [Watkins] has discussed settlement agreements with one of my stewards" (Tr. 105).

8. Mr. Hughes, as Chief Support Division, with respect to negotiations on the Union's Supplemental Agreement proposals, plainly espoused the position of DDO on the Union's proposals (Res. Exh. 1; Tr. 142-143).

Mr. Watkins, as Chief Support Division, advises the Depot Commander on labor relations (Tr. 177, 191); is the focal point for information requests from the gathering of data to Privacy Act determinations (Tr. 176-177); under the Master Labor Agreement, grievances went to the immediate supervisor; then to the Branch or Division Chief; then to the Region Commander (DDRW) (Tr. 153), but under the Supplement, grievances go to the immediate supervisor; then to the Depot Commander, and then to alternative dispute resolution (Tr. 153). Because grievances now go to the DDO Commander, Mr. Watkins is directly involved in the disposition of grievances (Tr. 191, 209). The Commander gave him the responsibility to devise the MEO for the Depot, a major issue which has been worked and re-worked since 1994 and on which Ms. Spiegel assisted (Tr. 214). Mr. Watkins now meets, or speaks, to the Union on labor-management matters 2-3 times per week (Tr. 217); he frequently communicates with Mr. Boswell and with Mr. Rick Dabel, Labor

Relations Officer, by telephone and by fax about labor matters (Tr. 144, 190); and is the Depot contact for DDRW for labor management matters. Mr. Watkins did handle with the Union implementation of the safety shoe matter and met with Messrs. Porter and Stasney, the Commander and Deputy Commander about the RIF and about safety shoes (Res. Exh. 7, Tr. 195, 196, 198). Mr. Watkins negotiated with the Union concerning blood spills and this led to withdrawal of an ULP charge (Res. Exh. 3). Mr. Watkins is the point of contact when labor relations issues involve Tinker Air Force Base -- by way of example: a Health Clinic problem; a parking issue (Tr. 155, 201); and implementation of the smoking policy. DDRW and the Union had a concept of the size and location of smoking huts; but Tinker decreed that all smoking huts on the base must be uniform and meet its designed appearance. Accordingly, Mr. Watkins had to coordinate the matter with all parties and bring to fruition places for employees to smoke (Tr. 200-201). Mr. Watkins prepared, on his own, a partnership agreement which he sent to Mr. Porter under his name (Tr. 180). Mr. Watkins supervises security and EEO for DDO (Tr. 174); and he developed an arrangement with Tinker Air Force Base for the hiring and training of displaced DDO personnel which he had to coordinate with the Union (Tr. 203-204). Mr. Watkins also is a Division Chief and supervises four branches, including the supervisor of each branch.

CONCLUSIONS

The bargaining unit in this case excludes: "All professional employees, management officials, supervisors, and employees described in 5 USC 7112(b) 2, 3, 4, 6, 7." (Res. Exh. 15, Attachment). 5 U.S.C. § 7112(b) provides, in relevant part, as follows:

4 “(b) . . . nor shall a unit be determined to be
5 U.S.C. appropriate (a) (2) includes as follows:

“(a) Nothing (1) consent as provided under shall
preclude 7135(a) (2) of this title 4, any
management official or supervisor;
 “(2) a confidential employee;
 “(2) the reemployment engaged in or initial
persons or work in other than a management
officials or supervisors represented by labor
organizations which historically or traditionally
represent management officials or supervisors in
private industry and which hold exclusive
Of course the reformation of such officials or professional
employees, management officials, supervisors, or confidential
employees, chapter who were excluded.

General Counsel quite succinctly states the issues presented as follows:

“. . . The issues presented in this case are
whether Watkins, as Chief of the Support Division

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DA-CA-50226, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: April 30, 1996
Washington, DC