

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2297, AFL-CIO Respondent	
and WILLIAM BAX Charging Party/Individual	Case No. SF-CO-60564

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 APRIL 28, 1997, and addressed to:

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

ELI NASH, JR.
Administrative Law Judge

Dated: March 26, 1997
Washington, DC

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

MEMORANDUM

DATE: March 26, 1997

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2297, AFL-CIO

Respondent

and Case No. SF-
CO-60564

WILLIAM BAX

Charging Party/Individual

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2297, AFL-CIO Respondent	
and WILLIAM BAX Charging Party/Individual	Case No. SF-CO-60564

Vince Mannino
Representative for the Respondent

John Pannozzo, Jr.
Counsel for the General Counsel, FLRA

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

On October 22, 1996, the Regional Director for the San Francisco Region of the Federal Labor Relations Authority (the Authority), pursuant to a charge originally filed on June 17, 1996, and amended on September 30, 1996, by William C. Bax, an individual (Bax or Charging Party), issued a Complaint and Notice of Hearing alleging that the American Federation of Government Employees, Local 2297, AFL-CIO (Local, Union or Respondent), committed an unfair labor practice within the meaning of section 7116(b) (1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing and/or refusing to give the Charging Party a Cancellation of Payroll Deductions for Labor Organization Dues Form SF 1188 (SF 1188), thereby preventing him from revoking his due's authorization.

A hearing was held in Los Angeles, California, at which time all parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties' filed timely post-hearing briefs which have been carefully considered.

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

Findings of Fact

The Charging Party was employed by the Department of Veterans Affairs Outpatient Clinic, Los Angeles, California as an Addiction Therapist prior to his retirement on September 3, 1996. Bax was in the bargaining unit represented by the Respondent under a nationwide collective bargaining agreement between the Veterans Administration (VA) and the American Federation of Government Employees (AFGE).

Around May 29, 1994, Bax executed an SF 1187 form, which authorized the deduction of union dues from his paycheck.

Sometime thereafter, Bax became disenchanted with the Respondent's dental plan and the Local election results, and decided to leave the union. According to Bax, he was told that he needed to have a verification from the union in order to stop his dues deductions.

Almost two years later, in mid-March 1996, Bax informed Local President Lula Jones during a conversation in her work area that he wished to leave the union. Bax also testified that he told Jones that he needed some verification from the Local to present to Payroll Clerk Shirley Ydrogo in order to stop his dues deductions when his anniversary date came around. The record reveals that, Jones was made aware of Bax's upcoming anniversary date and she told Bax that she would provide the requested documentation which would enable him to get out of the union.¹

Bax testified that he was unaware that an SF 1188 had to be completed as a condition precedent to revoking his dues authorization. Nor was he aware of the 30 day window period prior to his anniversary date. It is undisputed that

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1/ Jones denied that this conversation took place. Bax's version of the March 1996, meeting is credited based on his detailed recollection of that discussion and its place in the chronology of events.

Jones did not mention anything about the 30 day period leading up to the anniversary date or that Jones did not provide Bax with the SF 1188 form during their March 1996 meeting.

Around April 15, 1996, Bax received a telephone call from Jones, who told him that the letter was ready and that he could pick it up in the union's office. When Bax arrived at the union office, he was given a letter contained in a sealed envelope that was addressed to "Mr. Bax." According to Bax, he was instructed by Jones to take the letter to the payroll clerk. Jones denied that she instructed Bax to take the sealed envelope to the Fiscal Office because, she says that the SF 1188 had to be initialed off by the Respondent. Further, Jones stated that the Charging Party was accompanied by the Supervisor of Social Work Service Dorothy Lewis during their initial meeting that day in the union's office and that the sealed envelope was presented to Bax during a second meeting in the fourth floor hallway. Jones testified that there were six individuals in attendance at the first meeting, along with Bax, those individuals were Vice President Vince Mannino, Dorothy Lewis, Sakur Aguilar and a sixth employee named Richard. During this second meeting, Jones claimed that she instructed the Charging Party to open the envelope, read the letter contained therein and follow the instructions. Bax's version of the meeting is credited. In this regard, it is noted that Respondent failed to call as a witness any of the other individuals that Respondent claimed were in the union's office during that meeting although it clearly recognizes that credibility questions are involved in this case.

There is no question that Jones did not tell Bax that the envelope contained a letter which provided specific instructions for terminating dues deductions. Likewise, there is no evidence that Jones informed Bax that he had to follow the procedures set forth in the letter to revoke his dues authorization.

According to Jones, she did not provide Bax with an SF 1188 in March because she was too busy with another employee and there was no room for Bax to sit down in the union's office. The record reveals however, that SF 1188s were maintained in a file drawer within the Local office and Jones herself acknowledged that it would have taken just a few minutes for her to obtain the form from Respondent's file cabinet. Jones further testified that Bax, if provided an SF 1188 that day, could have been instructed to return the form within the thirty day window period. There is no evidence, as previously noted that Jones ever gave Bax any

instructions on how to revoke his dues authorization. Jones had the perfect opportunity to correct Bax's impression that he needed some verification or a letter from the union to present to the payroll clerk in order to stop his dues deductions. She failed to take advantage of the opportunity, however. Finally, Respondent could have attached an SF 1188 to the April 15th letter or simply placed an SF 1188 in the envelope.

Bax did not open the envelope based on his belief that his name served as an identifier for the Fiscal Office personnel who would process his dues revocation. Furthermore, Bax testified that when he initially went to see Jones, he told her that he needed some verification or a letter from the union to present to the payroll clerk in order to stop his dues deductions. Thus, it would have been perfectly reasonable for Bax to believe that this envelope contained the information that he requested from Jones during their first meeting. Since Jones did not inform him at the first meeting that this was not the way dues revocation worked, it seems even more reasonable that Bax would have taken the information directly to payroll and not opened it. The envelope also bore Respondent's logo on the upper left-hand side. In the circumstances, it is found that Bax thought that by obtaining this letter from Respondent, he had followed the appropriate procedure for revoking dues authorization.

That same day, Bax took the sealed envelope to the payroll clerk in the fiscal office. Apparently the payroll clerk also believed or, at least assumed that the sealed envelope contained the information needed to process Bax's revocation of dues authorization near his anniversary date. In any event, the payroll clerk did not question Bax, but instead filed the sealed envelope away in her files, without opening it, so that it would be available on Bax's anniversary date. At that point, Bax obviously felt comfortable that all the necessary paperwork had been submitted to the fiscal office in order to stop his dues authorization.

On June 4, 1996, however, Bax was informed by Ydrogo, the payroll clerk that the SF 1188 was not in the sealed envelope. Bax went to see Ydrogo, who informed him that it was impossible for her to process his dues revocation because an SF 1188 was not in the sealed envelope. Bax was given the April 15, 1996, letter which was in the envelope.

After meeting with Ydrogo that day, Bax contacted Jones in her workplace and requested an SF 1188. According to

Bax, Jones was busy and stated that she could not provide the form to him at that time.

The following day, June 5, 1996, Bax again contacted Jones, who refused to provide the SF 1188 to him. Jones did not give a reason for her refusal to furnish the SF 1188 to the Charging Party. Thereafter, Bax contacted the personnel office, which did not have an SF 1188 form. Later that day, Bax attempted to telephone the 12th District National Representative Andrea Brooks, in Sacramento, California, but was unable to reach her as she was apparently out of town. Bax did however speak with 12th District Representative Eugene Hudson who, according to Bax promised to speak with Jones regarding the matter and contact the Charging Party.

The ending date of the pay period for Bax's May 29, anniversary was Saturday, June 8, 1996. The cancellation date for the Charging Party's dues revocation would have been Sunday, June 9, 1996, had the SF 1188 been properly processed. Thus, it appears that Jones still had an opportunity to supply Bax with the necessary form before his window period expired, but refused this last minute opportunity.

On Wednesday morning June 12, 1996, Bax telephoned Hudson, who indicated that he had spoken with Jones and was attempting to arrange a three-way conference call for that afternoon. That afternoon, the conference call occurred and Jones, without reason, according to Bax, refused to allow him to leave the union.

An SF 1188 was never submitted on behalf of the Charging Party. Dues in the amount of \$11.55 continued to be deducted from Bax's biweekly paycheck until his September 3, 1996, retirement.

Article 31 of the collective bargaining agreement is entitled Dues Withholding and Section 6 contains the procedures for dues revocation.

Article 31, sections 6(a) and (b) state as follows:

A. Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely 1188 to the union representatives designated for such purpose. The union representative must certify by date and signature the date the SF 1188 is given to the union representative or some other appropriate date stamping device. In order

for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and 30 calendar days prior to the anniversary date.

B. The union official will, by reference to the remittance listing, determine the anniversary date of the allotment. The ending date of the pay period in which the anniversary date occurs will be entered in Item (6) on the SF 1188. The entry will be initiated by the union official, who will then deliver the form to the Fiscal Officer prior to the close of business of the Friday following the date entered in Item (6). If, through error of the Union, a form 1188 is received in the Fiscal office later than the agreed to date, the Fiscal office will process the form at the earliest possible time, but no later than the first pay period following receipt. Union representatives may be in a duty status while receiving and processing the SF 1188, and will be released from normal duties to carry out these duties under local release procedures.

According to Jones, Respondent does not accept an SF 1188, nor is the form effective, if submitted outside the 30 day window period. Respondent has a separate, two-step procedure for those employees in the Local who approach Respondent about terminating dues deductions before the beginning of their 30 day period. This two-step procedure, which has been in effect since 1992, requires the employee to make a request before the 30 day period to make an additional appointment to obtain and complete an SF 1188 within the 30 day window period. It appears that the extra step these employees have to follow was implemented for Jones' benefit. However, if an employee approaches Respondent within the 30 day window period seeking to leave the union, that employee is immediately provided an SF 1188.

The Respondent's two-step administrative policy concerning its dues revocation procedure is not contained in Article 31 of the collective bargaining agreement.² A copy of the two-step, administrative, dues revocation procedure

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2/ The General Counsel does not contend in this case that Article 31 violates the Statute. See, American Federation of Government Employees, AFL-CIO, 51 FLRA 1427 (1996) (AFGE, I).

was not provided to Bax when he joined the union in May 1994. In addition, the two-step procedure for dues revocation was not set forth in Bax's May 1994, Request for Payroll Deductions and Labor Organization Dues, SF 1187 form. In fact, Bax was never informed by Respondent regarding the two-step dues revocation procedure. A policy letter setting forth the two-step procedure for dues revocation was posted in 1992 at the former facility, 425 South Hill Street location, but not disseminated to the bargaining unit employees or seen by the Charging Party. This was the only occasion the Charging Party attempted to revoke his dues authorization.

SF 1188's are kept in the Local office. Jones stated that the SF 1188's were available in other locations throughout the facility, such as the Personnel Office. Bax testified that the Assistant Director for Personnel Patricia Dennis, told him that Jones was the only individual who possessed the SF 1188's.³ The records needed to verify the employee's anniversary date and thereby certify the SF 1188 are kept in the union's office.

Conclusions

Respondent violated section 7116(b) (1) and (8) of the Statute by its failure and/or refusal to provide Bax with an SF 1188 form since April 15, thereby preventing Bax from revoking his dues authorization

Section 7115 of the Statute allows employees to establish and revoke dues withholding allotments from their pay. While there is no particular means for initiating or revoking employees' dues withholding prescribed in that section, the Authority recognizes that "parties may define through negotiations the procedures for implementing section 7115" of the Statute, so long as those procedures do not infringe on employees' rights. Federal Employees Metal Trades Council, AFL-CIO, Mare Island Naval Shipyard, 47 FLRA 1289, 1294 (1993) (FEMTC). The Statute permits reasonable restrictions dues revocation processing but, it does not allow revocation procedures which are inherently coercive. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire,

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3/ Jones could not explain why the Personnel Office had not provided Bax with an SF 1188, but stated that Mr. Inman in the Personnel Office had instructed Bax to obtain an SF 1188 from the union. Respondent did not post any correspondence which informed employees that they could obtain an SF 1188 in the Personnel Office.

19 FLRA 586, 589 (1985) (Portsmouth); AFGE, I, 51 FLRA at 1433-34.

In Portsmouth the Authority found that negotiated procedures requiring "revocation of dues withholding authorizations were to be executed on forms which could only be obtained from the union at the union hall, and which had to be executed and submitted directly to the union there" are inherently coercive of employees' statutory rights to refrain from joining the union. There is hardly any difference between Portsmouth and the instant case since it was shown that the SF 1188s were kept by the Union in its office and that the Charging Party could not obtain the form elsewhere. Thus, Bax's testimony is credited, that when he sought the SF 1188 form from the personnel office, he was told that only Jones or the Local had the forms. Further, it is clear that Bax had to make a specific appointment in order to obtain the form and have it completed by the Union. Even where restrictions are found to be reasonable, the Authority has found that the Statute does not allow an unlawful application of reasonable restrictions. It is my opinion, that the restrictions placed on the Charging Party in this case were coercive.

The General Counsel, as previously noted, does not allege in this case that the same Article 31, section 6 is per se coercive of employees' exercise of their rights under the Statute. Thus, there is no contention that the provisions of Article 31, section 6 are unreasonable or coercive. Instead it asserts that Respondent's requirement (i.e. two-step procedure) that Bax or any other employee who sought an SF 1188 before that employee's 30 day window period, has to make an additional appointment with Respondent's representatives to obtain and complete an SF 1188. This requirement of an appointment, in the General Counsel's view, constitutes unreasonable conduct which interfered with, restrained and coerced the Charging Party's exercise of his rights guaranteed by sections 7102 and 7115 of the Statute.

Respondent denies that it delayed or refused to process Bax's dues revocation. Respondent argues in essence, that its duty was fulfilled when it gave Bax written instructions on how to revoke his dues authorization, but that he was negligent in not opening the letter addressed to him and, therefore, Respondent should not be found responsible for Bax's mistake. Respondent asserts that it was following a policy first established in 1992, to issue instruction letters to members wishing to revoke their dues deductions.

The record supports a finding that Respondent had two separate and distinct procedures for employees to follow when attempting to revoke their dues authorization. There is one procedure for those employees who contact Respondent within the 30 day period before their anniversary date, these employees are immediately given an SF 1188 form to complete. Other employees, however, such as the Charging Party, who (twice) contacted the Respondent outside the 30 day window period, are required to make an additional appointment within the 30 day window period with Respondent's representatives in order to obtain and execute an SF 1188 form. Respondent argues that its policy is simply to enable members who wish to revoke dues authorizations a specific time when they know that a union representative will be available to certify the SF 1188 form within the 30 day period. This position fails to invalidate the General Counsel's assertion that when Bax asked about his revocation of dues, he should have been given the SF 1188 form, and told how to fill it out and return it within the 30 day window period. When Bax made his initial request in mid-March, Jones had no idea whether Bax was in one category or another for the purpose of dispensing an SF 1188 to him. Thus, the General Counsel's view is that requiring Bax to make an appointment to receive the form and have it certified was itself coercive.

The record establishes that the form could only be obtained from the Respondent. The Authority has found that "the Union's control of the forms" was unlawfully coercive. See, Portsmouth, 19 FLRA at 590, n.8. Since the SF 1188 is only available in the Union's office, Respondent's argument that it would require the second type member to make an appointment to come to the union's office at a time set by the Union to sign the SF 1188 and give it to the union representative is unpersuasive. In any event, the Respondent had no idea which category Bax fell into until it had the opportunity to examine its files for his anniversary date.

The credited testimony shows that prior to his anniversary date, specifically in mid-March and on April 15, 1996, Bax met with Jones and expressed a desire to leave the Local. Notwithstanding his expressed interest in canceling his dues authorization, Respondent, on both occasions, failed to provide Bax with an SF 1188 form or even to apprise him that the completion of the form was a condition precedent to terminating dues deductions. Instead, Jones on April 15, 1996, gave him a letter stating that he was to contact the Local and "arrange an appointment to submit a

timely SF 1188." In AFGE, I a violation was found when employees repeatedly expressed to the Local their desire to revoke their memberships and made several unsuccessful requests to the Local for SF 1188 forms. Bax too sought aggressively to revoke his dues authorization by going to Respondent on several occasions before and even after his anniversary date. Bax, too, was unable to revoke his dues allotment because he could not obtain an SF 1188 form, other than from Jones who would not give him the form unless he arranged an appointment. He obviously knew very little about the dues revocation procedure. Furthermore, he must have assumed that the Local was there to help with this problem. Even assuming *arguendo* that Bax opened the April 15th, letter that Respondent gave to him, it did not contain the necessary form and therefore, Respondent still did not relinquish control of the SF 1188 as required by case law.

It is not disputed that Respondent could have given Bax a blank SF 1188 at any time during this process, instructed him to complete the form and then return it to Respondent for execution within the 30 day window period. Actually, the form could simply have been completed by Bax and finalized by the Respondent, since Respondent was certainly aware of Bax's

May 29th, anniversary date on April 15, 1996. Jones testified that she had to look up the anniversary date before finishing the letter. Jones insisted that she was too busy at that time, to reach into the file cabinet and give Bax an SF 1188 form. She did not claim however, that she was too busy simply to inform Bax that he should come back at another time for the form that would allow him to cancel his membership. Failure to do so is at the very heart of the General Counsel's case.

It certainly appears that Bax had no way of knowing about the dues revocation procedure. Notwithstanding Respondent's assertion that it followed a two-step procedure, such procedure was not contained in Article 31 of the parties' agreement, nor had it been widely publicized by the Respondent since 1992. The record reveals that Bax was neither provided a copy of the policy by Respondent nor was the two-step dues revocation procedure contained in Bax's May 1994, Request for Payroll Deductions and Labor Organization Dues, SF 1187 form.

Respondent asserted that it was merely following normal procedures whenever an employee sought to revoke his/her dues deduction outside the 30 day window period. In my view, the Respondent, if this is its policy, at the least had a responsibility to ensure that these procedures were

understood by all dues paying members who might desire to cancel their dues allotments. It was never shown, in this case, that Bax could have obtained any knowledge about Respondent's two-step procedure either by publication or contact with other employees. Furthermore, Respondent could have met that responsibility by giving Bax an unsealed letter on April 15th, and/or attached a blank SF 1188 form to the correspondence. If the manner in which Jones presented the letter to Bax created confusion as to what had to be done to cancel the allotment herein, the Local, in my view is accountable for its action. Here the record indicates that the instruction as to what Bax had to do with the sealed envelope were not at all clear. In the circumstances that are credited, it does not appear that Bax acted unreasonably in not opening the letter, but instead taking it to the Fiscal Office with the belief that he was effectively terminating his dues deductions. The fact that the instructions were erroneous or not clear, in my view, leaves Respondent accountable for its action of not supplying Bax with the SF 1188 or giving him the proper instructions for canceling his dues allotment.⁴

The Authority has already determined that the termination of dues withholding is controlled by section 7115 of the Statute, not by a dues allotment provision contained in the parties agreement. FEMTC, 47 FLRA at 1294; U.S. Department of the Treasury, U.S. Mint, 35 FLRA 1095, 1099 (1990). If the parties' agreement infringes on employee's right to have dues deducted from his paycheck, the agreement violates the Statute, Portsmouth. In this case, the two-step dues revocation procedure was not set forth in Article 31, section 6 of the agreement nor had it been publicized since 1992, two years before Bax even joined the union.

In AFGE, I, a case where employees repeatedly expressed their desire to revoke their union memberships; made several unsuccessful requests to the local for an SF 1188 form; and, also involved the same dues deduction provision involved herein, the Authority held that the union violated section 7116(b)(1) and (8) of the Statute by failing to promptly

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4/ Jones testified that during her tenure with the Local, it had never let members cancel dues allotment after their [anniversary] date "because of an error made by the Union." On the other hand, if the Local officers designated to sign off on the SF 1188 were not available, Jones maintained that the Local would "allow the person to drop." Jones certainly seems to have followed that policy also, since it is clear that Bax could still have dropped his membership during the pay period in which his anniversary date actually occurred.

furnish an SF 1188 to two unit employees. A similar defense that the charging party's request was untimely because it had been made outside the 30 day window period was rejected by the Authority saying, that "[t]he timeliness of the Charging Parties' requests for SF 1188s is irrelevant" to the finding that the officers' simple failure to respond to a member's request for revocation forms was conduct violative of the Statute. See also, American Federation of Government Employees, AFL-CIO, 52 FLRA 52 (1996) (AFGE, II) in which the Authority adopted that portion of the administrative law judge's order which found that the council and local refused to honor timely dues withholding requests received at their designated address. Like the charging party in AFGE, II, Bax made timely requests to terminate his dues deductions before his anniversary date and Respondent failed to provide him with the form necessary to achieve his objective. Instead, Respondent placed obstacles in Bax's path that ultimately prevented him from terminating his dues deductions in a timely fashion. The major obstacle, according to the General Counsel was the requirement that Bax make an appointment with a designated Local representative to submit an SF 1188. Since the record revealed that SF 1188s were only available at the Local office, this requirement is tantamount to requiring a member who inquires about revoking membership prior to the window period to return to the Local office to obtain the form and thus, virtually assuring that the member submit to the Local's control of the revocation. Under this procedure the Local clearly retains control of the SF 1188 throughout the process.

On two separate occasions Bax expressed his desire to Jones to cancel his dues deductions and both times Jones failed to provide Bax with an SF 1188. Instead, Bax was required to make yet another (third) appointment within his window period to obtain and complete the SF 1188. Consequently, Bax was treated differently than an employee who attempted to leave the Local during the 30 day window period. Furthermore, Bax would have been subject to the same restriction regardless of whether or not he opened the sealed envelope given to him by Jones on April 15, 1996, since it did not contain an SF 1188 form. Such action undoubtably sends a message to the membership that the apparatus for cancelling his/her membership is under the Local's control, and therefore can be canceled only by the Local. The two-step dues revocation procedure herein interfered with Bax's rights under section 7102 to refrain from joining or assisting a labor organization. The Respondent's two-step administrative procedure in this case is coercive and, therefore, interfered with Bax's right to revoke his dues withholding authorization. The Local's

refusal to provide Bax with the SF 1188 without making an appointment to submit the form is sufficient grounds for finding a section 7116(b) (1) and (8) violation of the Statute.

In conclusion, it is my view that the evidence establishes that the Local failed and refused to provide Bax with a Cancellation of Payroll Deductions for Labor Organization Dues form SF 1188, since April 15, 1996. Thereby preventing him from revoking his dues authorization.

Accordingly, it is found that Respondent's two-step administrative procedure for dues revocation that required a member who inquired about canceling a dues allotment to make an appointment to submit the SF 1188 form to a Local representative violated Bax's rights under section 7102 and 7115 of the Statute and thus, constituted an unfair labor practice under section 7116(b) (1) and (8) of the Statute.
AFGE, I.5

In light of the foregoing, it is recommended that the Authority adopt the following Order:

ORDER

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5/ Both sides mention Philadelphia Metal Trades Council and Ironworkers, Local 716, OALJ 89-112 (1989), adopted without precedential significance on October 18, 1989, where the administrative law judge held that the local violated section 7116(b) (1) of the Statute by interfering with an employees' right to revoke his dues allotment when the Local's Steward on several occasions informed the employee that he "would take care of" his dues revocation request, but failed to do so. Although the case is not Authority law, Respondent cites dicta of the Judge who stated that "had the union representative merely referred the employee to the contract" the union would have fulfilled its duty. In the instant matter, Jones, by presenting the sealed envelope to Bax with instructions to present the correspondence to the Fiscal Office, was in effect representing that the contents of the envelope would take care of Bax's dues revocation request. Jones neither referred Bax to Article 31, section 6 nor did she provide Bax with an SF 1188 form despite the fact that the forms were available when Bax visited the local's office.

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 American Federation of Government Employees, Local 2297, AFL-CIO (AFGE Local 2297), Los Angeles, California, shall:

1. Cease and desist from:

(a) Failing or refusing to promptly furnish an SF 1188 to William C. Bax or any other Local 2297 member who requests one.

(b) In any like or related manner fail or refuse to comply with our obligations under the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Make William C. Bax whole for all dues monies which were withheld from his paycheck during the period May 29, 1996, until Bax's retirement in September 1996.

(b) Post at its business offices and normal meeting places, 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 Local President Lula May Jones 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) Submit signed copies of the Notices to the Department of Veterans Affairs Outpatient Clinic, Los Angeles, California, facility for posting in conspicuous places where unit employees involved herein are located for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco 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.

Issued, Washington, DC, March 26, 1997

ELI NASH, JR.
Administrative Law Judge

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY
WE NOTIFY OUR EMPLOYEES THAT:

The Federal Labor Relations Authority has found that the American Federation of Government Employees, Local 2297, AFL-CIO violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

We hereby notify all AFGE, Local 2297 members that:

WE WILL NOT fail or refuse to promptly furnish an SF 1188 form to William C. Bax or any other member who requests one.

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

WE WILL make William C. Bax whole for all dues and monies which were withheld from his pay since May 29, 1996, the anniversary date at which time his SF 1188 form would have been effective had it been furnished to him in a timely manner.

(Activity)

Dated: _____ 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 its provisions, they may communicate directly with the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Decision in SF-CO-60564, issued by ELI NASH, JR., Administrative Law Judge, were sent to the following parties as indicated below:

—

CERTIFIED MAIL:

John Pannozzo, Jr.
Counsel for the General Counsel
901 Market Street, Suite 220
San Francisco, CA 94103

Vince Mannino, Executive Vice President
AFGE Local 2297
c/o Veterans Administration Outpatient Clinic
351 East Temple Street
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William C. Bax
1319 Masselin Avenue, #4
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REGULAR MAIL:

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

Dated: March 26, 1997
Washington, DC