

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

.....
INTERNAL REVENUE SERVICE
SPRINGFIELD DISTRICT
SPRINGFIELD, ILLINOIS

Respondent

and

NATIONAL TREASURY EMPLOYEES
UNION AND NATIONAL TREASURY
EMPLOYEES UNION, CHAPTER 43

Charging Party
.....

Case No. 5-CA-00362

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On Brief
For the Respondent

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On Brief
For the Charging Party

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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.,^{1/} and the

^{1/} For convenience of reference, sections of the Statute
hereinafter are, also, referred to without inclusion of the
initial "71" of the statutory reference, e.g., Section
7103(a)(13) will be referred to, simply, as "§ 3(a)(13)".

Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Ms. LuEtta Piper, after November 19, 1989, was a confidential employee within the meaning of § 3(a)(13) of the Statute and/or within the meaning of Article 1, Section 1 A and C of the National Agreement between the Internal Revenue Service and the National Treasury Employees Union (G.C. Exh. 2, "NORD III") (Agreement) and, accordingly, whether Respondent properly refused on, and after, November 19, 1989, to deduct Union dues from her pay. For reasons more fully set forth herein-after, I find that Ms. Piper is a confidential employee.

This case was initiated by a charge filed on April 13, 1990 (G.C. Exh. 1(a)), which alleged a violation of § 16(a)(1), and by a First Amended charge filed on June 29, 1990 (G.C. Exh. 1(c)), which alleged violations of §§ 16(a)(1) and (8). The Complaint and Notice of Hearing issued on June 29, 1990 (G.C. Exh. 1(e)); alleged violations of §§ 16(a)(1) and (8) of the Statute; and set the hearing for a date, time and place to be determined later. By Order dated July 6, 1990 (G.C. Exh. 1(i)) the hearing was set for November 6, 1990, pursuant to which a hearing was duly held on November 6, 1990, in Bloomington, Illinois, 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, December 18, 1990, was fixed as the date for mailing post-hearing briefs. Respondent, Charging Party and General Counsel each timely mailed an excellent brief, received on, or before, December 28, 1990, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The National Treasury Employees Union (hereinafter referred to as the "Union" or "NTEU") is the certified exclusive representative of a unit including the employees of Internal Revenue Service, Springfield District, and its Central Area Distribution Center (hereinafter referred to as "Respondent" or "CADC") located in Bloomington, Illinois, a branch of Resources Management Division, Springfield, Illinois.

2. Ms. LuEtta Piper is, and has been since November 19, 1989, secretary to the Chief, or Acting Chief, of the Order Entry Section of the Distribution Center (Tr. 33). The

CADC, headed by a Chief and an Assistant Chief, has three Sections: Order Entry; Distribution; and Inventory. Order Entry during the peak season, January through April, has about 350-400 employees (Tr. 104) and during non-peak periods has about 50 employees (Tr. 105). Below the Chief are two permanent Unit Managers^{2/} in Order Entry: Receipt Unit and Toll-Free Unit (Jt. Exh. 1). In addition, there is a support unit called Telecom (Jt. Exh. 1; Tr. 104). During peak season there are an additional eight expansion managers in Toll-Free and an additional five expansion managers in Receipt (Tr. 105). Order Entry is headed by a Chief; however, since Mr. Steve Lyons' departure on, or about, December 2, 1989 as Chief (Jt. Exh. 2; Tr. 160), the position, through December 1, 1990, was filled by four persons (Earlene Wilson, James Finley, Rose Frizzell and Susanne Nardini),^{3/} each regularly a supervisor (Tr. 88, 146, 164) including Ms. Frizzell, who, although designated Assistant Analyst, Telephone System Unit (Tr. 169), is, nevertheless, in charge of the Telecom Unit (Tr. 141), each serving, on temporary assignment, as Acting Chief (Jt. Exh. 2; Tr. 91 146, 164, 169).^{4/} The duties performed are unchanged whether the incumbent is Chief or Acting Chief (Tr. 177).

3. Ms. Piper had submitted a dues withholding authorization on November 6, 1987 (G.C. Exh. 13; Tr. 35), while she was employed in the Warehouse, a Section which was eliminated in a reorganization in 1989 when its functions were placed in Distribution (Tr. 38). On November 19, 1989, Ms. Piper became the secretary for the Chief, or Acting Chief, of Order Entry (Tr. 33), a position which Respondent designated

^{2/} On Joint Exhibit 1 they are designated "Chief, Receipt Unit" and "Chief, Toll-Free Unit"; however, herein, for clarity, they are referred to as "managers", the position of "Chief" being relegated exclusively to the Chief of Order Entry.

^{3/} Earlene Wilson heads the Toll-Free (Telephone) Unit (Tr. 41, 88); Susanne Nardini is Receipt Unit supervisor (Tr. 41, 146); Rose Frizzell heads the Telecom Unit (Tr. 41, 88), and James Finley is a group supervisor in Toll-Free (Tr. 164) under Earlene Wilson (Tr. 42).

^{4/} The position has not been permanently filled because the CADC was undergoing an A-76 Study (contracting out) (Tr. 174, 175).

as a "non-bargaining unit" position (G.C. Exh. 11; Tr. 35, 36). From and after November 19, 1989, Respondent ceased deduction of NTEU dues from Ms. Piper's paycheck (G.C. Exhs. 1(e) and 1(g), paragraph 14); however, Ms. Piper has remained a member of the Union and has paid her dues directly to NTEU (Tr. 80).

4. The Chief/Acting Chief of Order Entry^{5/} receives all grievances concerning Order Entry and sends them to the involved unit, i.e., Toll-Free, Receipt or Telecom (Tr. 93, 123), to set up a meeting. The Chief may attend the grievance meeting at which the unit manager, Union steward, grievant and Labor Relations Specialist also attend (Tr. 94, 123). The unit manager keeps notes of the meeting which are placed in the grievance file (Tr. 123). Thereafter, the draft decision is either prepared by the unit manager and sent to the Chief for review and approval (Tr. 106, 123), or is prepared by the Chief (Tr. 124; G.C. Exh. 5; IRS Exh. 36, Attachments). If the decision is prepared by a unit manager, the Chief, nevertheless, is briefed on the matter and makes recommendations before the decision is prepared (Tr. 106).

Conduct cases, e.g. failure to timely pay taxes (G.C. Exh. 6, pp. 1, 2, 5, 7), result in conduct suitability or cautionary letters which are authored by the Chief or by unit supervisors (G.C. Exh. 6, IRS Exhs. 2-6, 33, 34, 38, 39, 94, 158, 170). If a unit supervisor writes the conduct suitability letter it is reviewed by the Chief (Tr. 107-110, 120) and whether written by a unit supervisor or by the Chief, conduct suitability letters must be approved through the chain of command before they are issued. (Tr. 106, 139, 165-166, 167-188).

The Chief, as noted, is involved with the processing of grievances and the discipline of employees. (Tr. 94, 106, 112, 123-124, 170; IRS Exh. 2, 7-9, 23-32, 38-39). The Chief takes personnel actions such as developing a new position and formulating critical elements for the position (Tr. 132, 135-136, 149-150); reassigns employees; proposes changes in the work area and negotiates with the Union about such proposed changes (Tr. 148, 149, 150, 170-171); authorizes

^{5/} Inasmuch as the duties and responsibilities are, as noted, unchanged, the position hereinafter will be referred to as "Chief", although, as also noted, the position since December 2, 1989, has been filled solely by various persons being temporarily assigned as Acting Chief.

overtime and/or credit hours (Tr. 102) and approves leave (Tr. 102). The Chief approves all appraisals for Order Entry employees and recommends awards (Tr. 131, 161). The Chief attends staff meetings with the Chief of CADC (Tr. 132, 150) at which comments of the Chief were solicited on bargaining proposals and changes in working conditions are discussed (Tr. 71, 95, 136-137, 148, 149, 170, 171). The Chief recommends removal of seasonal employees (IRS Exhs. 12-22; Tr. 147); and takes action with regard to staffing, e.g. reduction of staff as work load diminishes (Tr. 134) or increase of staff to meet imbalances (Tr. 151).

The Chief evaluates managers (Tr. 131, 161); makes recommendations for awards for managers (Tr. 131, 161); and recommends discipline of non-bargaining unit employees (IRS Exh. 35, Tr. 159, 161-163).

5. All grievance decisions and all conduct letters are typed by the Chief's secretary whether the decision or the conduct letter is initially prepared by the Chief or by a unit supervisor (Tr. 91, 107, 120, 122, 157, 159, 165). Ms. Piper, since November 19, 1989, as secretary to the Chief has, of course, typed grievances (G.C. Exh. 5; IRS Exh. 7; Tr. 54-55; 91, 123, 148) and conduct suitability letters (G.C. Exh. 6, IRS Exhs. 2 and 38; Tr. 59, 60, 107, 120, 122, 147). Ms. Piper, as secretary to the Chief has also typed new critical elements for the Telephone Order Clerk positions (Tr. 52, 53, 69, 70, 149-150); SF-52s (notification of personnel action) (Tr. 63); appraisals for employees and for managers (Tr. 66); awards for employees (Tr. 67); awards for managers (Tr. 67); leave restriction letters (Tr. 84); notes taken by the Chief at staff meetings with Barley (Chief of CADC) (Tr. 84), and maintains a file of the minutes (Tr. 85); intermanagement documents (Tr. 70-71); notification of changes in conditions of employment that were sent to the Union (G.C. Exh. 7, Tr. 46-49); has compiled data in response to a Union information request (Tr. 50-52, 80); and she has access to all personnel files for both bargaining unit employees and non-bargaining unit employees (Tr. 51). Ms. Piper typed termination letters to probationary employees (IRS Exhs. 12-22); Tr. 154-155). She collects the mail for Order Entry and puts it in a folder for review by the Chief. The Chief directs her to make copies and/or to distribute such information to the units as the Chief feels they need. The mail folder is returned to Ms. Piper who files the mail remaining, for the Chief (Tr. 133-134). As secretary to the Chief, Ms. Piper does the typing, filing, answering telephones and taking messages (Tr. 43).

6. Nord III, the current Agreement between IRS and NTEU (G.C. Exh. 2), provides in pertinent part as follows:

"ARTICLE 1
"COVERAGE
"SECTION 1

"A.

"This Agreement covers all professional and nonprofessional employees of the Internal Revenue Service in district and regional offices and in the National Office, excluding . . . confidential employees, . . . (Emphasis supplied).

. . .

"C.

"The following are examples of confidential employees for purposes of this Agreement:

. . .

"2. Secretary to any management official designated to make decisions on grievances, except group clerks or unit clerks; . . ." (Emphasis supplied) (G.C. Exh. 2, Art. 1, Section 1 A and C 2).

Conclusions

§ 12(b) of the Statute provides, in relevant part, that,

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

(2) a confidential employee; . . ."
(5 U.S.C. § 7112(b)).

The Statute defines confidential employee as follows:

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations." (5 U.S.C. § 3(a)(13)).

While the Statute defines "confidential employee" as one who "acts in a confidential capacity with respect to an

individual who formulates or effectuates management policies in the field of labor-management relations", the Agreement of the parties specifically excludes, as a "confidential employee", the Secretary to any management official designated to make decisions on grievances. . . ." (G.C. Exh. 2, Art. 1, Sec. 1 C 2) (Emphasis supplied).

For reasons more fully set forth hereinafter, I find that the Chief, or Acting Chief, of Order Entry does formulate or effectuate management policy in the field of labor-management relations; that Ms. Piper, as secretary to the Chief, or Acting Chief, of Order Entry acts in a confidential capacity to the Chief, or Acting Chief; that, upon her assuming her current duties as secretary to the Chief, or Acting Chief, on November 19, 1989, Ms. Piper ceased to be in the bargaining unit; that, pursuant to § 12(b) of the Statute and Article 10, Section 12 of the Agreement of the parties (G.C. Exh. 2, Art. 10, Sec. 12), Ms. Piper's dues withholding terminated when she was placed in a non-bargaining unit position; and that Respondent did not violate § 16(a)(1) or (8) of the Statute when, on November 19, 1989, it ceased withholding dues from Ms. Piper's pay. Moreover, even if it were assumed, contrary to my finding, that the Chief, or Acting Chief, of Order Entry does not formulate or effectuate management policy in the field of labor-management relations, I would nevertheless find that Ms. Piper on, and after, November 19, 1989, as secretary to the Chief, or Acting Chief, of Order Entry, ceased to be part of the bargaining unit because, pursuant to Article 1, Section 1 C 2 and 3 of the Agreement of the Parties (G.C. Exh. 2, Art. 1, Sec. 1 C 2 and 3), it is both clear and conceded that: (a) the Chief, or Acting Chief, of Order Entry is a management officer designated to make decisions on grievances; and (b) Ms. Piper as secretary to the Chief, or Acting Chief, was excluded from the bargaining unit upon placement, on November 19, 1989, in a non-bargaining unit position. Consequently, pursuant to Article 10, Section 12 of the Agreement of the parties (G.C. Exh. 2, Art. 10, Sec. 12), her dues withholding was automatically cancelled and Respondent did not violate § 16(a)(1) or (8) of the Statute.

A. Chief formulates or effectuates management policies in the field of labor-management relations

The Authority has stated that,

"Section 7103(a)(13) of the Statute defines a 'confidential employee' as an

employee 'who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.' An employee is 'confidential' if: (1) there is evidence of a confidential working relationship between an employee and the employee's supervisor; and (2) the supervisor is significantly involved in labor-management relations. U.S. Army, Mesa, 35 FLRA at 186 (citing Headquarters, 1947th Administrative Support Group, U.S. Air Force, Washington, D.C., 14 FLRA 220, 225 (1984)). See Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Cincinnati District, Cincinnati, Ohio, 36 FLRA 138, 144-45 (1990); Department of Transportation, U.S. Coast Guard, 8th Coast Guard District, New Orleans, Louisiana, 35 FLRA 84, 87-89 (1990); U.S. Department of Housing and Urban Development, 34 FLRA 207, 211-13 (1990); Headquarters, Fort Sam Houston, Fort Sam Houston, Texas, 5 FLRA 339, 341-43 (1981). An employee is not 'confidential' in the absence of either of these requirements. U.S. Army, Mesa, 35 FLRA at 186 (citing Tick Eradication Program, 15 FLRA at 252; Federal Mediation and Conciliation Service, 5 FLRA 28, 31 (1981))." U.S. Department of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Arizona, 37 FLRA No. 16, 37 FLRA 239, 244 (1990).

During the peak season (January-April), Order Entry has about 350 to 400 employees and during the remainder of the year about 50 employees. The record shows that the Chief^{6/}

^{6/} As noted above, since the departure of Mr. Lyons as Chief of Order Entry on December 2, 1989, the position has been filled, because of an on-going A-76 Study (contracting out), by the temporary assignment of Order Entry supervisors as Acting Chief. The record shows that the duties and responsibilities of the Acting Chief are unchanged from the duties and responsibilities of Chief (Tr. 92), and, accordingly, as previously noted, the position is referred to as "Chief".

receives all grievances and forwards them to the unit manager involved to set up a meeting; that the Chief may attend and convene the grievance meeting at which the unit manager, Union steward, grievant and others attend; and may prepare the decision. If the decision is to be prepared by a unit manager, the Chief is briefed and makes recommendations before the decision is prepared and the decision is sent to the Chief for review and approval. The Chief actively participates in all conduct cases and either authors the conduct suitability or cautionary letter or, if such letter is prepared by a unit manager, it is reviewed by the Chief and must be approved by the Chief.

The Chief takes various personnel actions, such as developing new position descriptions and formulating critical elements for the position; reassigns employees; proposes changes in conditions of employment; notifies the Union of such changes; and negotiates with the Union over such proposed changes. The Chief authorizes overtime, approves leave, approves all appraisals for Order Entry employees and recommends awards. The Chief recommends removal of employees, takes action with regard to staffing, *i.e.*, reduction of staff as work load decreases or increase of staff to meet imbalances. The Chief evaluates managers and makes recommendations for awards for managers. The Chief also recommends discipline of non-bargaining unit employees. The Chief attends staff meetings with the Chief of CADC at which his or her comments are solicited on bargaining proposals and changes in working conditions are discussed. The Chief takes notes of the staff meetings which are typed by the Chief's secretary.

As the Chief is significantly involved in the handling of grievances, meets with the Union on changes in conditions of employment, and handles various personnel actions including: disciplinary actions, establishing new position descriptions, approving appraisals, approving leave, authorizing overtime, making comments on bargaining proposals, and recommending awards, the Chief effectuates management policies in the field of labor-management relations. U.S. Army Communications Systems Agency, Fort Monmouth, New Jersey, 4 FLRA 627, 636 (1980); Food and Drug Administration, Region 1, 6 FLRA 229, 232, 233-234, 235, 236 (1981); Pennsylvania Army National Guard, 8 FLRA 691, 693 (1982); Department of the Interior, Bureau of Mines, Twin Cities Research Center, Twin Cities, Minnesota, 9 FLRA 109, 111 (1982); Department of the Treasury, Internal Revenue Service, Portsmouth District Office, Portsmouth, New Hampshire, 13 FLRA 388, 389 (1983); United States Environ-

mental Protection Agency, Region IX, San Francisco, California, 16 FLRA 273, 274 (1984); U.S. Department of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Arizona, 37 FLRA 239, 240-241 (1990).

B. Secretary to Chief acts in confidential capacity

The secretary to the Chief, since November 19, 1989, Ms. LuEtta Piper, does all typing, filing, answering telephones and taking messages for the Chief. Ms. Piper types all grievances and all conduct letters; she types critical elements for new position descriptions; she types notices to the Unions of proposed changes of conditions of employment; she types appraisals for employees and for managers; she types awards for employees and for managers she types leave restriction letters; she types the notes taken by the Chief of CADC staff meetings and maintains a file of the minutes. She has compiled data in response to a Union information request; she has access to all personnel files for both bargaining unit and non-bargaining unit employees; she types termination letters; etc.

Following her re-assignment to the position of secretary to the Chief, Order Entry, Ms. Piper's Notification of Personnel Action (G.C. Exh. 11) showed that she was out of the bargaining unit (Tr. 33, 34-35). The nature of her work clearly demonstrates that she acts in a confidential capacity to the Chief. She handles a great variety of sensitive matters which cannot be prematurely disclosed to other personnel. For example, the notes of CADC staff meetings, which, as noted, she types and maintains, contain confidential information regarding labor-management issues such as discussion of changes in working conditions (Tr. 151). In addition, she types alternative work schedules (Tr. 151), reorganizations (Tr. 133), grievances, disciplinary actions, awards, and appraisals all of which are all highly sensitive matters which can not be prematurely disclosed to other personnel. Nor is there any question that she works for the Chief. That is precisely her job and her Position Description states, in part, that she,

"Is responsible for the proper functioning of the immediate office. . . ." (G.C. Exh. 4, p.2)

By contrast, the Safety and Training Office in Tick Eradication Program, Veterinary Services, Animal and Plant

Inspection Service, United States Department of Agriculture 15 FLRA 250 (1984), did not serve in a confidential capacity to the Director of the Tick Eradication Program. Ms. Piper not only is responsible for the proper functioning of the Chief's office, but she performs various duties for the Chief, ranging from the receipt of all mail and telephone calls to the typing for him of the wide range of matters set forth above. Viewing her duties she clearly is a confidential employee within the meaning of § 3(a)(13) of the Statute. U.S. Department of Interior, Bureau of Reclamation Yuma Projects Office, Yuma, Arizona, 37 FLRA No. 16, 37 FLRA 239, 246, 247 (1990); United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas, 31 FLRA 18 (1988); United States Environmental Protection Agency, Region IX, San Francisco, California, 16 FLRA 273, 274 (1984); Department of the Treasury, Internal Revenue Service, Portsmouth District Office, Portsmouth, New Hampshire, 13 FLRA 388, 389 (1983); Department of the Interior, Bureau of Mines, Twin Cities Research Center, Twin Cities, Minnesota, 9 FLRA 109, 110-111 (1982); Food and Drug Administration, Region 1, 6 FLRA 229, 231-237 (1981); U.S. Army Communication Systems Agency, Fort Monmouth, New Jersey, 4 FLRA 627, 636-637 (1980).

C. Secretary to Chief is secretary to management official designated to make decisions on grievances.

General Counsel characterizes the Chief's involvement in the grievance process as "minor" (General Counsel's Brief, p. 23). The record is to the contrary. As noted above, the Chief receives all grievances; the Chief forwards each grievance to the Unit manager involved to set up a grievance meeting; the Chief may attend and convene the grievance meeting; the Chief prepares the grievance decision or the Unit manager may be directed to prepare the decision. If the Unit manager is directed to prepare the decision, the Chief is consulted before the decision is prepared and after the decision is prepared it is submitted to the Chief for review and approval. In short, whether the Chief acts directly or through subordinate unit managers, the Chief is responsible for and controls the disposition of all first level grievances. This is far more than "minor" involvement in the grievance process. Nor does it matter that there are further steps in the grievance procedure above the Chief.^{7/}

^{7/} Or above the Chief of CADC, as indeed there are. See, General Counsel Exhibit 2 Article 41.

The effect is that the Chief decides each first level grievance.

But whether the grievance is deemed decided by the Chief or by a unit manager, the Chief and/or the Unit manager is a management official designated to make decisions on grievances and the secretary to the Chief obviously is secretary to a management official designated to make decisions on grievances inasmuch as all grievance decisions are typed by the Chief's secretary. That is, when the Chief prepares the grievance decision it is typed by his (Chief's) secretary and when a unit manager prepares the grievance decision it is, nevertheless, typed by the Chief's secretary who, in either event, is "Secretary to any management official designated to make decisions on grievances. . . ."

Consequently, when Ms. Piper became secretary to a management official designated to make decisions on grievances she moved out of the bargaining unit and, pursuant to the Agreement of the parties, her dues withholding was automatically cancelled (G.C. Exh. 2, Art. 10, Section 12; see, also, Art. 10, Sections 9 B 1, 10 A 5, 11 B).

Having found that when Ms. Piper became secretary to the Chief of Order Entry she became a "confidential employee" within the meaning of § 3(a)(13) of the Statute, Respondent did not refuse to comply with § 15(a) of the Statute for the reason that Ms. Piper was no longer, as required by § 12(b) of the Statute, in the bargaining unit, nor did Respondent violate § 16(a)(1) or (8) of the Statute by refusing to recognize Ms. Piper's dues assignment on and after November 19, 1989, inasmuch as she had, on November 19, 1989, ceased to be part of the bargaining unit. Accordingly, the Complaint should be dismissed.

Alternatively, on November 19, 1989, Ms. Piper was excluded by the Agreement of the parties, as a "confidential employee", when she became secretary to a management official designated to make decisions on grievances, pursuant to Article 2, Sections 1 A and C 2 of the Agreement of the parties (G.C. Exh. 2, Art. 2, Sections 1 A and C 2); her dues withholding was automatically cancelled when she moved out of the bargaining unit, on November 19, 1989 (G.C. Exh. 2, Art. 10, Section 12; see, also, Art. 10, Sections 9 B 1, 10 A 5, 11 B). Accordingly, for this reason alone the Complaint should be dismissed.

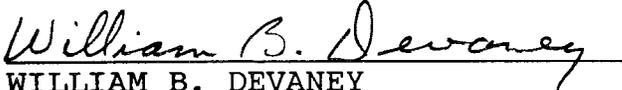
Finally, although neither General Counsel nor the Union asserts any differing interpretation of the Agreement -

indeed, each has ignored the Agreement - if there were any arguable differing interpretation of the Agreement it would, at most, be a contract dispute and the aggrieved party's remedy is through the grievance and arbitration procedure (see, specifically with respect to disputes arising out of dues withholding situations Article 10, Section 11 E). United States Marine Corps, Washington, D.C., et al., 33 FLRA 105 (1988); 22nd Combat Support Group (SAC), March Air Force Base, California, 30 FLRA 331 (1987). I perceive no differing arguable interpretation of the Agreement but, to the contrary, find the language clear, undisputed and directive. The record shows without contradiction that on November 19, 1989, Ms. Piper was moved to the job of secretary for the Chief of Order Entry and the record further shows without contradiction that she is secretary to a management official designated to make decisions on grievances. Accordingly, the Agreement directs that upon leaving the bargaining unit the employee's dues withholding is automatically cancelled. Therefore, whether, as I have found, Ms. Piper's dues withholding was automatically cancelled or there is an arguable differing interpretation of the Agreement, which is not asserted, the Complaint must in either event be dismissed.

Having found that Respondent did not violate § 16 (a)(1) or (8) of the Statute it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. 5-CA-00362, be, and the same is hereby, dismissed.


WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 25, 1991
Washington, DC