

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

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410TH COMBAT SUPPORT GROUP,  
K.I. SAWYER AIR FORCE BASE,  
MICHIGAN

Respondent

and

KAREN BAUSER (AN INDIVIDUAL)

Charging Party  
.....

Case No. 5-CA-10362

Victor R. Donovan, Esq., and  
Thomas Ingram, Esq.  
For the Respondent

Philip T. Roberts, Esq.  
For the General Counsel

Before: SALVATORE J. ARRIGO  
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-  
Management Relations Statute, Chapter 71 of Title 5 of the  
U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed  
by the captioned Charging Party against the captioned  
Respondent, the General Counsel of the Federal Labor  
Relations Authority (herein the Authority), by the Regional  
Director for the Chicago Regional Office, issued a Complaint  
and Notice of Hearing alleging Respondent violated the  
Statute by terminating the employment of the Charging Party  
because she sought assistance of the National Federation of  
Federal Employees, Local 1256 (the Union), the employees  
exclusive representative, by filing a grievance under the  
collective bargaining agreement.

A hearing on the Complaint was conducted in Marquette, Michigan, at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire recorded in this case, my observation of the witnesses and their demeanor and from my evaluation of the evidence, I make the following:

#### Findings of Fact

Karen Bauser began her employment at K.I. Sawyer Air Force Base in December 1987 as a cashier at the NCO club. In August 1988 she took a job as an accounts payable technician in the Financial Management Branch of the Non-Appropriated Funds (NAF) office. In her first performance appraisal she was rated outstanding and an Inspector General review from June 1990 singled her out for having done a "superior job."

In July 1990 she decided to change jobs and became a Child Development Clerk (desk clerk) at the Child Development Center (the Center) which was located at the Air Base. Bauser's job at the Center was an Appropriated-Fund position and accordingly, when she moved over to the Center she became a probationary employee.

The Center is basically a day-care center for the children of military members and civilian employees of the Base. Parents can reserve space for their children and pay by the hour, day or week. Some choose to reserve space in advance while others simply drop in and leave their children, subject to availability of space. The Center is required by Air Force regulations to maintain certain minimum ratios of adult day care providers (attendants) to children.

In the Spring of 1990 the Center received authorization to expand its capacity almost four-fold and hire additional employees. Prior to the expansion there was only one clerk, Suzanne Webster. In July 1990, three new clerks, Bauser, Karen Kent and Biff Ahlman, were hired. Webster apparently left the Center shortly after.<sup>1/</sup>

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<sup>1/</sup> Bauser was selected for the clerk job by Center Director Lois Steele. While she was an accounts payable technician with NAF, Bauser had almost daily contact with Steele. When the new clerk positions became available, Steele personally told Bauser she would like to have her work at the Center.

Bauser, Kent and Ahlman started working at the Center around July 16, 1990. They received no formal training. Instead, for about four days they helped the existing clerk Webster and observed her on the job. Exact job duties were never clearly defined. Even though the three clerks had the same position description, they did markedly different work. Bauser handled the "front desk" and worked from 6:30 a.m. to 3:30 p.m. while Kent worked at the "back desk" from 9 a.m. to 6 p.m. In this capacity Bauser's duties included: (1) opening the building in the morning; (2) taking reservations and payments from parents; (3) giving medication to children; (4) answering the phones; (5) watching the room ratios (i.e., the ratio of attendants to children in a given room) and; (6) consolidating the cashiers' reports (CRs), which involved balancing the payments and receipts and logging this information by appropriate category for forwarding to the main office at another location. The CRs had to be taken to the main office by noon each day.

Among other things, Karen Kent: (1) took over the cash register at 3:30 p.m., when Bauser left; (2) closed the building at the end of the day; (3) balanced the day's payments with receipts; (4) deposited the payments at the bank; (5) handled the employees' schedules, time cards, and payroll and; (6) maintained the paperwork for children receiving state aid for child-care. Kent also answered phones and took reservations from time to time and worked at the "front desk" when Bauser was away for lunch or giving children medication.

Ahlman did mostly manual labor, such as assembling toys, plus some paperwork, such as taking reservations and posting prepaid accounts.

After the first week at the Center, according to Bauser, she and the other clerks learned their jobs by doing a task and later being criticized by CDC Director Steele if a problem arose. Steele frequently passed procedural changes to the clerks simply by issuing cryptic notes without explanation. All three clerks were the object of Steele's criticism from time to time. Bauser attributed the lack of proper and thorough training and guidance as the reason for most problems arising which resulted in criticism by Steele.<sup>2/</sup>

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<sup>2/</sup> On August 24, 1990 the three new clerks received 4 hours orientation from the Center trainer and on September 5 Bauser received additional training from the trainer on reservations and adjusting the acceptable ratio of child care attendants to children in a room.

Steele acknowledged she had been having problems with the performance of the three new clerks. She specifically testified that on September 4, 1990 she felt compelled to talk to Bauser about her work performance including not ignoring customers to attend other duties when parents were seeking service and completing cashier reports between 6:30 a.m. and 8:30 a.m. so Steele could take the documents with her to her daily visit to the main office.

On September 19, 1990, while preparing cashier reports, Bauser discovered that Ahlman (who had closed the night before) was off by \$53.00 in balancing the previous nights payments and receipts. Steele offered to help find the error and in doing so, she discovered that the clerks were not maintaining certain payment records. Webster, the prior clerk, never recorded these payments on the proper forms and Steele had not previously instructed Bauser on this subject. Steele also discovered that a number of parents were delinquent in their payments. She produced a "letter" to parents covering the matter and told the clerks that they must start following the policy that parents must be paid in full by Monday every week. The clerks responded that they had not been previously told to do this, but were glad to start.

That afternoon Steele drew up letters of counseling for Bauser, Kent and Ahlman which she gave to them on September 20, 1990. Steele's letter to Bauser stated:

SUBJECT: Counseling of Karen Bauser

1. On 20 September 1990, the undersigned met with Karen Bauser as a result of the errors being made, work not accomplished to her position description.

2. Employee Response:

Karen stated that she did read parents letters just hadn't understood that she was to make sure payments were made on time - she felt problems were created before she started - I explained that 2 months was plenty of time to correct problems and she had to get right on it.

3. Rules were given:

- a. CR's to be completed first thing in the morning.

- b. All charges added on 1182's as they occur and entered in register.
  - c. All Count Sheets completed at time of count.
  - d. All Weekly's recorded Monday or no later than Tuesday morning with a list of unpaid patrons made up and spoken to at end of day Tuesday.
  - e. All money/checks received will be recorded on 1182's.
  - f. The children's reservation system will be completed by Monday evening, 24 September 1990.
  - g. A room ratio is to be kept at all times with flexible employees being dismissed when not needed for room count.
  - h. All parents letters put out at front desk must be read so they are aware of everything.
- 4. The undersigned informed the employee that the above statement would be entered within the AF Form 971. (Supervisors Record of Employment)
  - 5. The employee was informed that the undersigned is available to provide any reasonable amount of advice and assistance in preventing a recurrence of this/those or similar incidents.

Bauser met with Steele, refusal to sign the letter, and essentially denied any shortcomings and took issue with some of the comments on the counseling letter. She further indicated she had not received any guidance on a number of the items but would follow the rules given in the future.

Around this time Bauser went to the main office and met with Marvin Scherbring, Respondent's Chief of Recreational Services and CDC Director Steele's immediate supervisor.<sup>3/</sup>

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<sup>3/</sup> Bauser testified that on September 19 she accidentally saw a copy of a draft of her counseling letter and immediately went to see Scherbring whom she had known from her prior employment at the facility. She testified this was her first and only meeting with Scherbring on this matter.

Bauser testified that the counseling letter frightened her and she told Scherbring she was ". . . scared because we need training (and) can't get training." During the conversation Scherbring asked Bauser if she wanted him to go to Steele about the matter and Bauser indicated that she was afraid if he did that Steele might resent it and possibly fire her. Scherbring conveyed that Bauser would not be fired and Bauser asked him to talk to Steele "because we need help."

Scherbring recalled two such meetings with Bauser. He estimated the first occurred approximately one month after Bauser began work at the CDC (this would be sometime in August). According to Scherbring, Bauser came to his office and told him she was having problems at the CDC and that Steele was telling her she wasn't doing things correctly and Bauser felt she had not been properly trained. Bauser expressed fear of being fired. Scherbring later called Steele and told her of his meeting with Bauser. Scherbring testified Steele told him that Bauser had been trained and he told Steele that Bauser convinced him she had not been properly trained and suggested Steele set up a training program for Bauser. Steele agreed to do so.

Scherbring also testified that approximately one month later he had a second meeting with Bauser at which Bauser told him things were still not right at the CDC and she was "scared to death" that Steele was going to fire her. Later Scherbring called Steele to his office and Steele indicated that although Bauser was being trained, she was not grasping how things were to be done. Scherbring testified he essentially told Steele to work with Bauser and regardless of what the situation was, she should be "fair."

CDC Director Steele testified, in summary fashion, that on some undisclosed date Chief of Recreational Services Scherbring called her to his office and explained that Bauser had been to see him in a very disturbed condition. Scherbring explained that Bauser was of the opinion that Steele was being unfair to her and she had not been given enough training. Steele testified she told Scherbring that apparently something had been overlooked perhaps with all three new clerks. Steele went on to testify that she thereafter had Anita Smith, the trainer, work with Bauser on reservations and also had her secretary, Carolyn Olson, who had previously worked

as a desk clerk, work with Bauser and explain their procedures.<sup>4/</sup> Steele's personnel data sheet (form 971) on Bauser stated that Smith gave Bauser additional training or reservations on September 5, 1990.

According to Bauser<sup>5/</sup>, on the day following the meeting between Steele and Scherbring, Steele told Bauser she realized desk clerks could not be expected to perform their assigned tasks without training and she would attempt to communicate better with them to avoid problems. Bauser testified they "discussed some ideas" Bauser had and Steele seemed to like them and for the next few weeks Steele seemed to treat her better.

On Friday September 21, 1990 Steele announced that effective September 24, desk clerks Bauser and Kent would essentially exchange jobs, including shifts. However, Kent was to retain responsibility for the employee payroll and State aid aspects of her assignment. Bauser testified that Steele announced the change was to enable Bauser and Kent to learn one another's job so, in the event of sickness, all assignments could be accomplished.<sup>6/</sup> Steele did not deny having given Bauser this reason for switching jobs, but testified that she implemented the change because she was having "many complaints" about Bauser from parents and, from her observations, concluded that Bauser could not satisfactorily perform a number of tasks at the same time. In any event, after September 24 Bauser's contact with customers was substantially reduced due to both the nature and hours of her work.

The record reveals that on October 1, 1990 Bauser was assigned to work on time cards for payroll purposes after receiving only minimal instruction from desk clerk Karen Kent.<sup>7/</sup> Bauser performed the task and took the payroll

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<sup>4/</sup> Steele testified she subsequently asked desk clerk Karen Kent if she needed more training and Kent indicated she did not.

<sup>5/</sup> Taken from a portion of an affidavit given by Bauser during the investigation of her unfair labor practice charge which was read into the record on cross-examination.

<sup>6/</sup> Kent did not testify having resigned and relocated.

<sup>7/</sup> This incident was related in an October 23, 1990 memorandum from Bauser to Marvin Scherbring requesting review of the termination actions taken against her.

cards to the main office. According to Bauser:

Later, around noon Lois Steele called and asked Karen Kent if they had been signed. I was standing right next to Karen as she told Lois, "Gee, Lois, I'm sorry. I forgot to tell Karen that they had to be signed." The next day when I came in Lois said to me, "Say. How come you didn't have the time cards signed yesterday?" I told her it was because I didn't know they had to be signed. She raised her hands exasperatedly and said, "But you came from (the main office!)" I said, "Yes, but I have never done payroll before (I had told her this before, also). She ridiculed me, saying that perhaps she should start going over all of my work to be sure there is no mistakes, and proceeded to take all the work out of my hands and go over it. I told her, "Lois, no one can do a job right the first time without at least being shown how to do it."

According to CDC Director Steele, it was during the period of late September that she decided to terminate Bauser's employment. Thus Steele testified that she told Scherbring, her supervisor, around the time she changed Bauser's assignment that she couldn't work with Bauser, that she was "frustrated" and couldn't communicate with Bauser. When she told Scherbring of her intention to terminate Bauser, according to Steele, Scherbring told her to "go ahead."

Scherbring testified that between Bauser's visits to him, estimated to be sometime in August and a month later in September, Steele came to his office several times and indicated Bauser might be fired. Thus Scherbring testified:

I asked Lois, "How is Mrs. Bauser doing in her training?" And she said, "I am afraid she is just not going to catch on. She is not going to make it. We are trying our darnedest to train her, and it just doesn't seem like she is going to make it." That was -- Then, a couple of other times she came in my office and she said, I asked her how things were going, and she said, "They are not going good at all."

Scherbring further testified in the "first part of October," which he estimated to be around the fifth to the tenth of October, Lois Steele told him she felt Bauser was "just not catching on" and she was going to "have to let her



go." Scherbring indicated Steele should make sure she could prove she had been fair and tried to train Bauser.

Steele testified that during early October she went to the Civilian Personnel Office and talked about terminating Bauser with Robert John, the Civilian Personnel Officer and his subordinate Clyde Steele, Employee Relations Officer and husband to Lois Steele.<sup>8/</sup> According to Lois Steele, she met with John and her husband and explained that Bauser's employment wasn't "working out" and was told by Clyde Steele that if she decided to terminate Bauser it would be best to do it during the first 90 days of her employment. Steele testified that thereafter she composed various drafts of a termination letter for Bauser at home with the help of her husband.<sup>9/</sup>

Robert John testified that over a period of approximately two months Lois Steele discussed with him by telephone or in person performance problems she was having with Karen Bauser. According to John, he advised Steele she should take reasonable steps to ensure the employee was given an opportunity to perform according to acceptable standards and to document any performance problems. John also advised that after efforts to "rehabilitate" Bauser, if it appeared she was not going to be able to perform at an acceptable level, the appropriate time to terminate her would be during the probationary period. John testified that while he could not recall specific dates, his "best guess" was that Steele told him she was going to do a "removal action" on Bauser a week or two prior to October 17, 1990, the day he "signed-off" on Bauser's termination letter.

Meanwhile, on Friday October 13, 1990, Bauser filed a grievance with the local Union Chief Steward.<sup>10/</sup> The grievance stated, in relevant part:

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<sup>8/</sup> Lois Steele testified that on numerous prior occasions she had discussed with John that she was having problems with Bauser.

<sup>9/</sup> Clyde Steele was not called to testify in these proceedings.

<sup>10/</sup> Bauser testified that on October 12 she saw Scherbring at the main office and told him she needed some help and had an appointment with the Union Chief Steward at noon. According to Bauser Scherbring simply replied, "Oh, okay."

(Footnote continued on next page).

1. Ms. Bauser has filed a complaint with this office, dealing with overtime worked without getting paid, and a letter of counseling, also she is concerned about the lack of training within the child development center, and the possibility of harassment.
2. Remedy sought is to pay her the overtime worked, remove the letter of counseling from her record, supply the needed training rather than letters of counseling, and stop the harassment if in fact this is happening.

On Monday morning October 15 a Union Steward delivered the grievance in an envelope to CDC Director Steele.<sup>11/</sup> Steele testified she took the letter to her husband Clyde and questioned what she should do since she was revising the removal letter, and Clyde Steele advised her to proceed with the removal, which she did.

According to CDC Director Steele, after she completed the final version of the Bauser termination letter she gave it to her husband Clyde on October 17, 1990 and he gave it to Robert John, the Civilian Personnel Officer. John reviewed the letter on October 17 to ascertain that it was procedurally correct, signed it and it was signed by Respondent's legal office on October 19. On that same day Steele gave the document to Bauser. The letter notified Bauser she would be terminated on October 26 and the termination was based on specifically identified acts of "Inability to take responsibility" and "Failure to comply with procedures and follow established operating procedures and wanton disregard for directives."<sup>12/</sup> The letter further stated:

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(Footnote continued from previous page).

Scherbring was not question regarding this matter but did testify he was unaware until the hearing that Bauser filed a grievance but was aware that Bauser was claiming she had "put in overtime" at the Center.

<sup>11/</sup> Steele testified she found the envelope on her desk.

<sup>12/</sup> It does not appear from the record that any of the specific incidents referred to by Steele occurred subsequent to Bauser's September 20 letter of counseling.

- c. You were removed from the customers contact area during the busy hours of the day due to several justified customer complaints of misinformation and inattention.
- d. You have been counseled and provided additional training to correct your performance deficiencies, but there has been very minimal improvement.

Bauser requested review of the action by letter of October 23, 1990 wherein she denied, questioned or gave her version of the specifics set forth in this termination letter. Recreational Services Chief Scherbring sustained the action on October 25 and Bauser was terminated from employment on October 26, 1990.

On March 25, 1991, Bauser filed the unfair labor practice charge giving rise to these proceedings.

#### Additional Findings, Discussion and Conclusions

Counsel for the General Counsel essentially contends Mrs. Bauser was discharged in retaliations for having filed a grievance, activity protected by the Statute, and Respondent's reasons for the termination are a pretext. Counsel for Respondent takes the position that the General Counsel has not established a prima facie case of retaliation and, in any event, the record supports a finding that Bauser was discharged for legitimate reasons. Respondent also urges that if a violation of the Statute is found regarding Bauser's discharge, reinstatement is not available as a remedy since Bauser was a probationary employee.<sup>13/</sup>

In resolving issues involving allegations of discrimination violative of section 7116(a)(2) of the Statute, as herein, the Authority in Letterkenny Army

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<sup>13/</sup> For the reasons set forth in U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Detroit Teleservice Center, Detroit, Michigan, 42 FLRA 22 (1991), I reject Respondent's contention that the Authority does not have jurisdiction over a case involving the termination of a probationary employee.

Depot, 35 FLRA 113 (1990) (Letterkenny) set forth various factors it would consider. In United States Customs Service, Region IV, Miami District, Miami Florida, 36 FLRA 489 (1990), the Authority, after noting the General Counsel always has the burden of establishing a violation by the preponderance of the evidence, summarized Letterkenny as follows:

We stated (in Letterkenny) that in all cases of alleged discrimination, the General Counsel must establish that: (1) the employee against whom the alleged discriminatory action was taken was engaged in protected activity; and (2) such activity was a motivating factor in the agency's treatment of the employee in connection with hiring, tenure, promotion, or other conditions of employment. Id. at 118. We also stated that the General Counsel may also seek to establish, as a part of its prima facie case, that a respondent's asserted reasons for taking the allegedly discriminatory action are pretextual, or after presentation of the respondent's evidence of lawful reasons, the General Counsel may seek to establish that those reasons are pretextual. Id. at 122-23.

We noted that when the General Counsel makes the required prima facie showing, a respondent may seek to rebut that showing by establishing, by a preponderance of the evidence, the affirmative defense that: (1) there was a legitimate justification for its actions; and (2) the same action would have been taken in the absence of protected activity. Id. at 123. We pointed out that if the respondent rebuts the General Counsel's prima facie showing by a preponderance of the evidence, thereby establishing that it would have taken the allegedly unlawful action even in the absence of protected activity, the General Counsel has not established a violation of the Statute. Id. at 119.

In the case herein, clearly Bauser, by filing her grievance with the Union on October 12, 1990, engaged in protected activity. See Equal Employment Opportunity Commission, 24 FLRA 851 (1986), affirmed sub nom. Martinez v. FLRA, 833 F.2d 1051 (D.C. Cir. 1987). However, the basic issue herein is whether Bauser's filing of her grievance was a motivating factor in Respondent's decision to terminate her employment.

Counsel for the General Counsel contends that an accumulation of circumstantial evidence establishes a prima facie case that Bauser's termination violated the Statute and the evidence submitted by Respondent was insufficient to rebut this prima facie showing. To support this contention counsel for the General Counsel raises various matters including the timing of Bauser's discharge wherein she received her termination notice only a few days after she filed her grievance.<sup>14/</sup> Such timing does raise suspicion that Bauser's termination might have been the result of her filing the grievance. Cf. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 17 FLRA 773 (1985) and Cf. Department of the Air Force, 410th Combat Support Group, K.I. Sawyer Air Force Base, Michigan, 33 FLRA 352 at 372 (1988).

In addition counsel for the General Counsel suggests that an inference of unlawful motivation regarding Bauser's termination can be drawn from alleged disparate treatment against Bauser, contending desk clerks Kent and Ahlman were no better employees than Bauser and Steele did not take similar action against them. However, Kent quit her employment in early October and Steele's explanation that Ahlman seemed contrite regarding criticisms of his performance while Bauser was defensive or unmoved is an adequate distinction as to why Steele may have reacted differently regarding Bauser's and Ahlman's perceived faults.

Counsel for the General Counsel points to evidence that during the week of October 15 Steele hastily went through records and sought information from subordinate employees and parents critical of Bauser's performance on the job and that Steele primarily relied on incidents predating Bauser's September 20 counseling to support the termination which, it is contended, gives rise to an inference that the motivation behind Bauser's termination was unlawful. In the circumstances herein I find such conduct might be indicative of

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<sup>14/</sup> Counsel for the General Counsel also takes the position that remarks by Steele disparaging to the Union reveal union animus and should be considered in establishing that Steele had a discriminatory motivation when discharging Bauser. Thus the record contains undenied testimony of Steele informing a new employee in October 1989 that there was a Union but she wouldn't need it and telling the Union President, while discussing a contract dispute around the time Bauser filed her grievance, that she didn't have "time for any of this Union nonsense."

illegal motivation and assist in supporting the establishment of a prima facie case.

Counsel for the General Counsel also urges that the circumstances surrounding questionable notations Steele claimed she made on Bauser's personnel data sheet (form AF971) tends to undermine Steele's credibility. I agree that the absence of certain data on the AF971 and testimony regarding Steele's notations raises substantial questions of reliability.<sup>15/</sup>

However, the record also reveals that shortly after beginning at the Center Bauser, as well the two other desk clerks, were the object of steady criticism by Center Director Steele. Regardless of whether Steele's training of the employees, or lack thereof, was the cause of job performance problems, it is clear that Steele was unhappy with Bauser's job performance. Thus Steele talked to Bauser about what Steele perceived as deficiencies on September 4 and September 19 and issued a letter of counseling to Bauser, and the other two desk clerks, on September 20. According to Recreational Services Chief Scherbring, whose testimony I credit, during this period Bauser's relationship with Steele was such that Bauser expressed fear of being fired since her job performance obviously did not please Steele. Whether adequate training was subsequently given to Bauser or whether Steele rotated Bauser and desk clerk Karen Kent in their jobs for training purposes or because Steele wished to remove Bauser from contact with parents and working closely with caregivers is in doubt. However, there is no question that by October 1, 1990 Steele was still very displeased with Bauser as an employee, perhaps because of performance or because of her attitude of refusing to accept the blame for what Steele viewed as lack acceptable job performance, or a combination of both. In any event, Bauser's own statement leaves little doubt that as of this date Steele had substantial concerns about Bauser's capacity to perform her assigned tasks. Thus, Steele "ridiculed" Bauser, said she perhaps should review all of Bauser's work for mistakes, and then took the work from Bauser and proceeded to review it on the spot.

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<sup>15/</sup> Notwithstanding, I have not relied on AF971 nor do I find it necessary to resolve the questions raised by that document in order to dispose of the basic issues herein.

It was around this time that, according to the credited testimony of Scherbring and Civilian Personnel Office John, that Steele told them of her intention to discharge Bauser.<sup>16/</sup> Thus the record unquestionably discloses that before Bauser engaged in any protected activity Steele was very unhappy with Bauser as an employee, had decided to discharge Bauser, notified others of her intent, and, I find, began to compose Bauser's termination letter.<sup>17/</sup> By October 12 when Bauser filed her grievance with the Union and by October 15 when, I find, Respondent first became aware that Bauser had filed a grievance, Bauser's discharge was already set in motion. In these circumstances I conclude Bauser's filing her grievance was not in any manner a motivating factor in Respondent's decision to terminate her.

Accordingly, based upon the entire record herein I conclude that as the General Counsel's prima facie case has been rebutted by a preponderance of credible evidence, the General Counsel has not established a violation of the Statute and I recommend the Authority issue the following:

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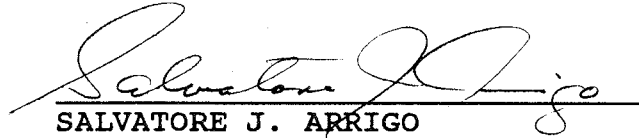
<sup>16/</sup> I was favorably impressed with both Scherbring and John as witnesses. Their recollection of specific dates was somewhat vague, as one might expect when relating facts concerning distant events in which they were not the primary players and occurred almost six months before the unfair labor practice charge was filed. However, their demeanor as well as the probabilities of their versions of events was very convincing and I found their testimony to be reliable.

<sup>17/</sup> I was generally not impressed with Steele as a witness. Among other things her testimony, especially on important matters, was frequently the result of leading by Counsel for Respondent and many of her responses were inexplicably vague and conclusionary. While I might normally be disposed to find much of her testimony unreliable, the attendant facts concerning Steele's displeasure with Bauser and the credited testimony of Scherbring and John lends credibility to Steele's testimony that she not only intended to discharge Bauser's but already began composing Bauser's termination letter prior to Bauser filing her grievance.

ORDER

IT IS HEREBY ORDERED that the Complaint in Case  
No. 5-CA-10362 be, and hereby is, dismissed.

Issued, March 31, 1992, Washington, D.C.

  
SALVATORE J. ARRIGO  
Administrative Law Judge