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

OALJ 25-12

U.S. DEPARTMENT OF AGRICULTURE,
FOOD SAFETY AND INSPECTION SERVICE
LOS ANGELES, CALIFORNIA
Respondent

And

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 926, AFL-CIO
Charging Party

SF-CA-22-0372

Robert Bodnar
Yolanda C. Shepherd
For the General Counsel

Joshua N. Rose
Jose Calvo
For the Respondent

Dana S. Barilla
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

Santaneice (Sandy) Cross is a Consumer Safety Inspector with the Department of Agriculture's Food Safety and Inspection Service, and at the time the events of this case unfolded, she was the President of AFGE Local 926. After an argument with her supervisor about the agency's treatment of another employee, her supervisor filed a workplace violence complaint against her. While the complaint was being investigated by the agency's Internal Affairs division, Cross was detailed to a position under a different supervisor. After the investigation was completed, Internal Affairs determined that there was no evidence of misconduct on Cross's part, and the investigation was closed. Instead of returning Cross to her previous job, however, the agency reassigned her to a slaughterhouse inspection job that Cross

considered undesirable. The issue before me is whether the agency discriminated against Cross because of her protected union activity by failing to return her to her old position or to a comparable one.

I held a hearing on this issue in January of 2024, and the FLRA Regulations call for me to issue a decision. But the President of the United States determined, in Executive Order 14251 ("Exclusions from Federal Labor-Management Relations Programs") (the EO), issued on March 27, 2025, that the Department of Agriculture's food safety inspectors (among many other employees at many other agencies) have (to quote Section 7103(b)(1) of the Statute), "as a primary function intelligence, counterintelligence, investigative, or national security work," and that collective bargaining with these inspectors cannot be conducted "in a manner consistent with national security requirements and considerations."

As I write the above words, I have a hard time keeping a straight face, my mind reeling at the absurdity of it: meat inspectors whose primary function is national security! But the President's determination is no laughing matter. It has deeply serious consequences for the everyday working lives of thousands of food safety inspectors, and by extension, hundreds of thousands of other federal employees who have been similarly disenfranchised by the same executive order -- nurses at VA hospitals, scientists at the Environmental Protection Agency, clerical employees and personnel specialists at dozens of agencies, to name a few. If the EO is found to be lawful, all of the Respondent's employees will have lost any legal protections to join a union and bargain with management over conditions of employment. The statute that protects federal employees' bargaining rights will no longer protect them, and the Federal Labor Relations Authority will have no jurisdiction to resolve Ms. Cross's case.

In light of the EO, I asked the parties for their views as to what effect the EO had on the FLRA's jurisdiction in this case. The parties correctly noted that in the weeks since March 27, a large number of parties have filed suit challenging the legality of the EO. At least two United States District Courts have issued rulings that the EO is likely unlawful and issued preliminary injunctions against its enforcement, while an appeals court has stayed one of the injunctions while the lawsuit is pending.[1] The Federal Labor Relations Authority has, for similar reasons, stayed proceedings in cases pending before it that involve agencies covered by the EO. The fate of the EO, as well as the legal rights of hundreds of thousands of employees, remains unclear, as these legal challenges move slowly forward.

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[1] *Nat'l Treasury Emp. Union v. Trump*, Civil Action No. 25-0935, ___ F.Supp. 3d ___, 2025 WL 1218044 (D.D.C. April 28, 2025) (District Court enjoined enforcement of portions of the EO), motion for stay pending appeal granted 2025, WL 1441563 (D.C. Cir. May 16, 2025); *Am. Foreign Serv. Ass'n v. Trump*, Civil Action No. 25-1030, ___ F.Supp. 3d ___, 2025 WL 1387331 (D.D.C. May 14, 2025) (District Court enjoined enforcement of other portions of the EO); *U.S. Dep't of Defense v. Am. Fed'n of Gov't Emp., AFL-CIO, Dist. 10*, Civil Action No. 6:25-119, (W.D. Tex.. Complaint filed March 27, 2025); *Am. Fed'n of Gov't Emp., AFL-CIO v. Trump*, Civil Action No. 4:25-3070 (N.D. Cal., Complaint filed April 3, 2025).

Because the FLRA's jurisdiction in this case is pending litigation, the parties in this case have, in slightly different ways, requested that I hold the case in abeyance and await a definitive ruling from either the FLRA or the courts. The Respondent asks that I stay the proceedings, while the General Counsel asks that I remand the case to the General Counsel's San Francisco Regional Director. These requests would make perfect sense, in normal times; but these are not normal times.

At the same time as the courts are grappling with the lawfulness of EO 14251, the FLRA has been grappling with the impact of other executive orders directing it and other federal agencies to radically tear down their organizations and to eliminate huge swaths of their workforce. Some of those orders are being challenged in court as well, but in obedience to orders from the so-called Department of Government Efficiency, the FLRA has undertaken its own reorganization by eliminating some of its divisions and coercing as many employees to resign as possible. One of the offices being eliminated is the FLRA's Office of Administrative Law Judges. Within thirty days, the FLRA will no longer employ Administrative Law Judges. Therefore, if the courts ultimately determine that the President's removal of the Respondent's food safety inspectors from the coverage of the Statute was unlawful, there will be nobody here to rule on the credibility of the witnesses and resolve the many factual issues raised at the hearing, as required by Section 2423.34 of our Regulations.

For this reason, I will use what authority I still have to decide the case, which the parties have litigated so energetically. If the courts ultimately decide that the EO is lawful, then the FLRA will have no jurisdiction over the Respondent; and if exceptions are filed to my decision, then the Authority will be able to dismiss the case, as it did in similar circumstances in 2002. *See, e.g., U.S. Att'y's Off., S. Dist. Tex., Houston, Tex.*, 57 FLRA 750 (2002) If the courts strike down the EO, then the Authority will have my decision, and it will be able to resolve any exceptions in the normal manner. Both the Charging Party, the Respondent, and the FLRA's General Counsel have engaged in a great deal of effort to convince me of the justness of their cause, and it would be an injustice to all of them if I placed the case on hold and relegated it to a procedural black hole. I am the only person who heard the testimony at the hearing, and only I can resolve any credibility and other factual disputes. Accordingly, I will rule on the evidence and arguments they have presented, and once the fate of Executive Order 14251 has been decided, the Authority can handle any appeal without the need for a new hearing.

STATEMENT OF THE CASE

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the FLRA or the Authority), 5 C.F.R. part 2423.

On June 4, 2022, the American Federation of Government Employees, Local 926, AFL-CIO (the Union or Charging Party) filed a ULP charge against the U.S. Department of Agriculture, Food Safety and Inspection Service, Los Angeles, California (the Agency or Respondent). GC Ex. 1(a). After investigating the charge, the Regional Director of the San Francisco Region of the FLRA issued a Complaint and Notice of Hearing, on behalf of the

FLRA's General Counsel (GC), against the Respondent on June 1, 2023. GC Ex. 1(b). The Complaint alleged that the Agency retaliated against a Union official for her protected activity by reassigning her to a less desirable position, in violation of § 7116(a)(1) and (2) of the Statute. On June 27, 2023, the Respondent filed its Answer to the Complaint, admitting some of the factual allegations but denying that it had violated the Statute. GC Ex. 1(d).

A hearing was held in this matter on January 17 and 18, 2024, with the parties participating on the MS Teams platform. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses; a court reporter prepared a transcript of the hearing.[2] The General Counsel and the Respondent have filed post-hearing briefs, which I have fully considered.

In response to my April 9, 2025 Order Reopening Record to Receive Position Statements regarding the impact of EO 14251, the Respondent filed a Motion to Stay Proceedings until the multiple lawsuits challenging the EO have been resolved. On April 18, 2025, the General Counsel filed a Motion to Remand the case to the San Francisco Regional Director, to await guidance from the Authority and the courts regarding the FLRA's ongoing jurisdiction to decide the case.

For the reasons stated in my introduction to this decision, I am not remanding this case or holding it in abeyance; instead, I believe it is in the interest of justice, and consistent with Section 2423.34 of the Authority's Regulations, to issue a decision and to allow any jurisdictional issues to be addressed later by the Authority. Accordingly, based on the entire record, including my observations of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Food Safety and Inspection Service (FSIS) is a subdivision of the United States Department of Agriculture, responsible for providing food inspection services at meat, poultry, and other food plants pursuant to the Federal Meat Inspection Act. Resp. Br. at 2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The National Joint Council of Food Inspection Locals, American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization within the meaning of § 7103(a)(4) of the Statute, and it is the certified exclusive representative of nationwide consolidated units of FSIS employees, including employees of the Respondent. The Charging Party, AFGE Local 926, is an agent of AFGE for the purpose of representing the Respondent's bargaining unit employees. Complaint, ¶ 3, 4.

[2] One of the challenges of conducting remote hearings, with the parties, witnesses, and reporter spread out across the country, is that the court reporter cannot always ensure, at the close of the hearing, that he or she has all of the proper exhibits. This problem became evident in the weeks after the hearing, when counsel discovered that the original transcript was missing some exhibits and contained other exhibits that had not been admitted. After several email communications between the counsel, the reporter, and me, the discrepancies were corrected, and all parties were satisfied that the transcript and exhibits are complete and accurate. Only the finally agreed-upon transcript and exhibits are being transmitted with the record.

Santaneice Cross has worked for the Agency since 2010, first as a Food Inspector and since 2012 as a Consumer Safety Inspector. Food Inspectors work at slaughterhouses, on an assembly line, where every animal must be visually inspected. Consumer Safety Inspectors are generally assigned to a specific group of non-slaughter food processing plants which they visit every day, reviewing records and operations in the plant and ensuring that federal standards are met. Working on a slaughter line is a much dirtier and more physical job, and Ms. Cross was able to bid on and obtain a CSI position after two years as an FI.

Some CSIs work in patrol assignments and others work in relief, or coverage, assignments. In a patrol job, an employee is responsible for a set group of facilities and works a regular tour of duty. Relief employees, on the other hand, fill in for employees who are absent or on leave; from week to week, not only can their tour of duty change, but also their plant assignments, which sometimes requires them to work on the slaughter line. While both patrol and relief employees are CSIs, it was apparent at the hearing that relief positions are generally considered less desirable. This was particularly true for Ms. Cross, who has extensive family obligations that conflict with the unpredictable work schedule of a relief employee.

For the first ten months of 2021, Cross worked as a CSI on a patrol assignment and was responsible for five plants in the Walnut Circuit in Southern California. She worked a fixed tour of duty from 6:30 a.m. to 2:30 p.m., Monday through Friday, and she reported to Front-Line Supervisor Sabrina King. Above Ms. King were a Deputy District Manager for the Walnut Circuit and the District Manager for the Alameda District, which covered the states of California, Nevada, and Arizona. During the time of the events in our case, William Griffin was the Alameda District Manager. As President of Local 926, Ms. Cross represented employees in six counties in Southern California. Antonio Zamora, another CSI who also worked under Ms. King, was the Vice-President of Local 926.

On October 27, 2021, Cross and King engaged in a phone conversation which overshadows this entire case and changed Cross's life. At that time, Ms. King had only been working as Front-Line Supervisor in the Walnut Circuit for about two months; she had fairly frequent contact with Mr. Zamora, as he regularly represented bargaining unit employees in the circuit, and she had somewhat less frequent contact with Cross. Tr. 421-22. King needed to discuss a work matter with Cross that day, and Cross returned King's phone call. They discussed an issue regarding one of Ms. Cross's plants, and then Cross raised a point concerning Mr. Zamora. Cross had heard reports that the Agency was seeking witness statements regarding a complaint made by plant officials concerning Zamora. Tr. 191. According to King, Cross told her on October 27, "if you're having issues with Zamora, it'd be better if you talk with me about it, because I can get him straight." Tr. 424. Cross continued, "you know, Zamora is like a brother to me, that's my dude. You know, if you go after him, Barilla[3] and I will be going for your head." Tr. 424-25.[4]

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[3] Dana Barilla is the President of the Western Council of Food Inspectors Locals, a Union position that encompasses several states in the Western U.S. Tr. 21-23.

[4] In relating the details of the October 27 phone call, I generally accept Ms. King's description of what was said. King testified at our hearing regarding the conversation, while Cross did not. At a 2023 arbitration hearing concerning the Agency's decision to temporarily detail Cross after the October 2021

King was greatly alarmed by Cross's comments, which she interpreted as a threat of violence against her, and she filed an official complaint against Cross in a FSIS Form 4735-4 (Reporting Form for Assault, Harassment, Interference, Intimidation or Threat). GC Ex. 15 at Bates 67-71. As she explained in a statement she made shortly thereafter: "I felt like this was a direct threat, harassment and interference . . . against me in protecting her colleague, CSI Antonio Zamora, and interfering with my position as supervisor in the Walnut Circuit. I feel she lodged this threat to compromise or curtail any pursuit to supervise the rest of the circuit personnel." *Id.* at 71. She continued, "I not only fear for my physical safety, but I fear for my job. . . . They, the union members, know my car and the area of my coverage, much better than I do. I could be followed and harmed. . . . I now feel like I must watch over my shoulders everywhere I go. . . . The union representatives in this area are bullies to say the least and it is difficult to perform as a supervisor." *Id.*

When District Manager Griffin was advised of Ms. King's threat complaint and King's fears regarding her safety, Griffin realized that he would have to separate King and Cross while an investigation was pending. Tr. 332. Since King supervised in the Walnut Circuit, Griffin felt he needed to detail Cross to a position in a different circuit. Because of the COVID pandemic, the Agency's highest priority was keeping slaughter lines fully staffed, and they had a need for an inspector at a slaughtering plant in the Riverside Circuit. Griffin also felt this would be nearer to Cross's home. Accordingly, Griffin detailed Cross to that position on November 8, 2021. Tr. 148, 332-35. While Cross retained her classification as a CSI, her duties on this detail were actually those of a food inspector, working on a slaughter line all day. Tr. 148-49. Her Front-Line Supervisor in this job was Cheryl Henry.

King's complaint was forwarded by her Deputy District Manager to the Agency's Internal Affairs Office (IA) for investigation and possible discipline. An IA investigator conducted an investigation remotely and obtained affidavits from both King and Cross in February of 2022. GC Exhibit 15 is his Report of Investigation, which does not contain any conclusions as to whether Cross committed any misconduct or what action should be taken. That report was subsequently forwarded to the Agency's Labor and Employee Relations Department (LERD), which has the delegated responsibility for determining whether to impose disciplinary action against employees. Tara Hayes, the LERD specialist for the Alameda District, reviewed the Report of Investigation and determined that there was not enough evidence to conclude that Cross had committed any misconduct, because it was basically one person's word against another's, with no corroborating or documentary evidence. Tr. 404-08. Ms. Hayes notified Cross in writing of her conclusion in an email dated May 5, 2022. GC Ex. 16, 17. The memo from Ms. Hayes provided no explanation for her conclusion, except that the investigation "revealed no evidence of misconduct on your part." GC Ex. 17. Ms. King and district management were also advised of this determination.

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conversation, King's testimony was consistent with what she stated at my hearing. Cross testified in the arbitration that she couldn't recall specifically what she said, but she insisted she didn't threaten King or use the words King attributed to her. Resp. Ex. 2. In light of these factors, I accept that Cross used the words attributed to her by King, but I do not accept King's interpretation of, or response to, those words. I will discuss this later in more depth.

Upon learning that LERD had found no misconduct on Cross's part, Mr. Griffin had to decide where to assign Cross. At the same time, Ms. King wrote to Griffin to tell him "I need to vent." Resp. Ex. 9 at 1, dated May 5, 2022. "I am so disappointed in this Agency and how unsupportive they are of victims of violence. At this point I feel unsafe and I feel that the Agency is in support of the union's threatening behavior and bullying tactics." Later in this letter, King continued, "The union loves to speak of lack of candor, yet they are so consistent with their lies and manipulations, until they believe them to be true." *Id.* King went on to relay a rumor that the IA investigator was a friend of Mr. Barilla, and she suggested that "the investigator needs to be investigated." *Id.* at 2.

In April of 2022, shortly before the IA investigation of Ms. Cross had been completed, the Agency promoted another employee, Jose Galvez, to the CSI position that Cross had been filling while on detail. Tr. 340-48; Resp. Ex. 4. Griffin testified that the Front-Line Supervisor, Ms. Henry, selected Galvez, but he signed the letter officially notifying Galvez of the promotion. Tr. 342; Resp. Ex. 4. This meant that Cross would have to be reassigned somewhere else, and Griffin decided that even though IA had cleared Cross of misconduct, he could not move her back to her old job under King's supervision. Tr. 349-50. He had discussed Cross's situation with his Deputy District Manager, who related to him that King continued to feel threatened by Cross. Tr. 352-53. This conversation, in addition to King's letter to him expressing similar feelings, convinced Griffin that he could not return Ms. Cross to her old job, or to any position in the Walnut Circuit. He looked instead to assigning her to a position in the Riverside Circuit, which he felt would keep her relatively close to her residence. Tr. 350-51. He therefore reassigned Cross to a relief position headquartered at a beef slaughtering plant in the Riverside Circuit, effective May 22, 2022. GC Ex. 18, 19. This work was similar to what she had been doing while on detail since November, albeit at a different location, but now, as a relief inspector, her duty assignments and hours changed from week to week. Tr. 140. Cross disputed Griffin's assertion that her new job is closer to her home; she said her headquarters plant is a 45-minute drive from home, and that in some weeks her assignment requires a 75-minute drive, at 2:30 in the morning, all of which greatly interferes with her family responsibilities. Tr. 166-69.

While Ms. Cross was on detail between November 2021 and May 2022, her supervisor, Ms. Henry, rejected a doctor's note that Cross had provided to excuse her absence from work for five days in April of 2022, and Cross was charged with AWOL for those days. The Union filed a grievance challenging the AWOL determination, and it filed a separate grievance challenging the Agency's decision to detail Cross from November 2021 to May 2022. On June 1, 2023, Arbitrator Mark Berger conducted an arbitration hearing on these grievances, and he issued two separate decisions on them on August 17, 2023. In one grievance, the arbitrator ruled that the Agency did not abuse its discretion in detailing Cross out of King's circuit, because it had a legitimate need to do so while investigating King's complaint against Cross. Resp. Ex. 2. He noted that the Agency's decision in May of 2022 to permanently reassign Cross "is being challenged by the Union in another proceeding and is not at issue in the instant arbitration." *Id.* at 2 n.1; *see also id.* at 21. In the second grievance, the arbitrator also ruled that the Agency (specifically Henry and Griffin) unreasonably refused to accept Cross's doctor's note, and he required the Agency to rescind the AWOL and make Cross whole. GC Ex. 20. The arbitrator noted that in refusing to explain to Cross why her medical excuse was unacceptable, Griffin and

Henry allowed "feelings about the local Union's representation [to get] in the way of better judgment." *Id.* at 11-12.

When Cross was notified that she was being permanently reassigned in May 2022, Western Council President Barilla inquired of Griffin why Cross was reassigned the same day as LERD had issued its "no misconduct" finding; he further protested Cross's assignment to a relief position, when she had previously held a patrol assignment. GC Ex. 18. Even though the IA investigation and the LERD review had already been completed, Griffin told Barilla that he could not discuss the matter, "since it's an open investigation." *Id.* The Union believed that once Cross was found not to have committed misconduct, she should have been restored to her old position as a patrol CSI. In Barilla's understanding, this had been what Alameda District management had done in similar situations: he testified that a Consumer Safety Inspector, identified simply as Mr. P, and a Food Inspector, Mr. W, had been investigated for sexually harassing employees in plants they inspected. Tr. 86-89. Mr. P was detailed to a different plant during the investigation and then returned to that plant after he was cleared of misconduct in 2016; Mr. W was never detailed while his investigation was pending, and he remained there even after he was found, in 2018, to have committed a lesser form of misconduct. *Id.*; GC Ex. 25, 26. Mr. Griffin testified that he was not the District Manager when these incidents occurred.

On October 25, 2022, Union Vice President Zamora raised a problem with Mr. Griffin regarding employees in the Walnut Circuit trading positions in the middle of a rotation. GC Ex. 10 at 2. After Griffin gave Zamora a cursory reply, Zamora emailed Griffin again, telling Griffin that he should already be aware of the problem. *Id.* at 1. He continued: "If you really want an answer take Sabrina's muzzle off." (Sabrina here was Ms. King.) King received a copy of this email and testified that she found it "very offensive, as if to say I'm a slave animal." Tr. 441. She complained about Zamora's comment to an Agency LERD specialist, who issued an "Unprofessional Conduct – Letter of Instruction" to Zamora. GC Ex. 10 at 3-4. Among other things, the Letter of Instruction stated, "Inferring that your supervisor is an animal to be muzzled is a form of harassment that is unacceptable." *Id.* at 3. Barilla subsequently filed an unfair labor practice charge over this action, after which the charge was settled when the Agency agreed to rescind the letter. Tr. 103-04.

In June of 2023, a job vacancy opened for a Consumer Safety Inspector patrol position in the Riverside Circuit. GC Ex. 23. Ms. Cross, who was a GS-9 at the time, applied for the position but was not selected; instead, the job was given to a GS-8 employee who had eleven years less seniority. Tr. 224-32; GC Ex. 24.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel begins its analysis of the Agency's actions by laying out a broad pattern of protected activity by Cross in representing bargaining unit employees, beginning at least in the early months of the COVID pandemic and ending in late 2022 when she resigned as a Union officer. Both Cross and Barilla wrote numerous critical, sometimes angry, letters to Agency officials expressing their complaints about how Griffin and his subordinate managers

handled employee problems during the stressful conditions that existed then. *See, e.g.* GC Ex. 5 at Bates 18-19 ("The Union is utterly disgusted by you and Alameda district managements [sic] unwillingness to deal with the FLS Cheryl Henry, Dr. Vaughn-Taylor-Lehman.") Cross was particularly critical of Front-Line Supervisors King and Henry, and she raised her objections about them at Union-Management LMR meetings in the fall of 2021 and the spring of 2022. The Union witnesses at the hearing felt that labor relations took a distinct turn for the worse when Griffin became District Manager in early 2021, and Griffin himself seemed to acknowledge this when he testified that his predecessor "would often give into the Union at the expense of the supervisors." Tr. 311. The GC argues that Griffin retained a resentment of the Union for these criticisms. GC Br. at 21. The GC also notes that the agendas for the November 2021 and May 2022 LMR meetings were circulated by the Union to Griffin immediately before Cross was detailed and then later permanently reassigned. *Id.* at 22; GC Ex. 8, 11; Tr. 190-91.

The General Counsel then places Ms. Cross's interactions with FLS King within the context of Cross's intense way of representing her employees. While Griffin seemed to understand that Cross would get carried away in the severity of her language, and he understood it was part of her performance of her Union duties (Tr. 315-17), the GC asserts that King took every Union complaint personally and as an attempt to intimidate her from supervising her employees. As King stated in her affidavit during the IA investigation: "Ms. Cross attempted to interfere with my duties as a supervisor in wanting to protect Mr. Zamora. . . . I feel Ms. Cross lodged this threat in an attempt to compromise and/or to curtail my ability to supervise [personnel] assigned to the Walnut, California Circuit." GC Ex. 15 at Bates 94; GC Br. at 38-39. King expanded her complaint about Cross to include the Union in general, and Zamora in particular. In her February 2022 affidavit, made three months after her phone call with Cross, King said:

> I feel my Livelihood is being threatened, and I am bullied and harassed and there is nothing I can do about it. . . . I fear for my physical safety and wellbeing. They, the union members, know my car and the area of my coverage, much better than I do. I could be followed and harmed and would not have a clue about what is happening. . . . The union representatives in this area are bullies to say the least and it is difficult to perform as a supervisor when you feel that you constantly must walk on eggshells because the union representatives are operating with a gang-like mentality.

GC Ex. 15 at Bates 94-96. King expressed similar sentiments at the hearing. When asked if Zamora ever did anything she considered threatening, she said, "I won't say threatening, I would say more bullying. He was very aggressive. I would say more of a bullying type attitude." Tr. 422. King was more specific and resentful in her accusations against Zamora in her February 2022 affidavit and in her May 2022 "venting" letter to Griffin. In her affidavit she named Zamora as having "harassed" her and questioned her authority "constantly." GC Ex. 15 at Bates 95; *see also* Resp. Ex. 9 at 1, 2. The GC also points to King's attempt to discipline Zamora for his "muzzle" comment as nearly identical to her overreaction to Cross's protected activity on behalf of Zamora. GC Br. at 33-35. While the Respondent objected to the introduction of

evidence relating to the "muzzle" comment, as it occurred in October 2022, several months after Cross had been permanently reassigned (Tr. 100-103), the GC asserts that post-complaint conduct can be admissible, even persuasive, when it shows a pattern of behavior. GC Br. at 35.

Therefore, the GC asserts that Cross had a long history of protected activity, and that this activity caused both King and Griffin to resent her and to be predisposed to punishing her protected activity.

The GC argues that King's resentment against Cross and the Union came to a head in May of 2022, when she was notified that LERD had found no misconduct by Cross. First in conversations with her Deputy District Manager and then with Griffin, King "vented" her anger not only at Cross and the Union but also at Agency management "and how unsupportive they are of victims of threats of violence. At this point I feel unsafe and I feel that the Agency is in support of the union's threatening behavior and bullying tactics." Resp. Ex. 9 at 1. The GC emphasizes that despite King's repeated assertions that she felt threatened -- even months after the initial altercation -- neither King nor Agency investigators could identify any actions taken by anyone in the Union to further threaten or endanger her. GC Br. at 39, citing the IA investigation, GC Ex. 15 at Bates 57. Nonetheless, King insisted to Griffin in her May 5 letter that she could not work with Cross, and ultimately Griffin sided with King, by "punish[ing] Cross for what she said to King even though LERD refused." GC Br. at 41. The GC likens Griffin's support of King to his earlier support of FLS Henry's rejection of Cross's medical note, where Arbitrator Berger found that Griffin and Henry's "feelings about the local Union's representation got in the way of better judgment." GC Ex. 20 at 11-12. The GC asserts that Griffin "turned a blind eye [to the LERD finding] and punished Union activism." GC Br. at 42.

Thus in May of 2022, Griffin had to reassign Cross. As the GC argues, "LERD had closed out the case, and King had survived for seven months unmolested, without even a hint of the ongoing violence she imagined from Cross or her Union sympathizers." *Id.* at 43. "Griffin could have simply told King that she needed to develop a thicker skin. . . . Instead, the GC asserts that Griffin breathed new life into King's closed violence complaint and violated the Statute. Cross's initial disciplinary detail thus became a disciplinary reassignment with additional onerous conditions." *Id.* at 44.

The GC submits that Cross was clearly engaged in protected activity when she spoke to King about Zamora on October 27, 2021, and that both Cross's initial detail to the Riverside Circuit and her subsequent permanent reassignment were direct results of Cross's Union representation of Zamora. Griffin's explanation that he could not return Cross to her job in the Walnut Circuit was based entirely on King's repeated insistence that she was in fear for her life. The statements on which King based her fear, and on which Griffin based his reassignment decision, did not constitute flagrant misconduct or otherwise exceed the boundaries of statutory protection, as applied by the Authority. *Id.* at 45 (citing *U.S. Dep't of Def., Def. Contract Mgmt. Agency, Orlando, Fla.*, 59 FLRA 223, 224-26 (2003)). The GC submits, therefore, that under the standards set forth in *Letterkenny Army Depot*, 35 FLRA 113, 118 (1990) (*Letterkenny*), Cross was engaged in protected activity, and her protected activity was not just a motivating factor, but the sole factor, in the Agency's May 2022 reassignment decision. And applying the factors considered by the Authority in balancing a union official's right to represent other

employees against management's right to maintain order, the GC argues that Cross did not exceed the boundaries of statutory protection. GC Br. at 46-47. "Griffin could have simply stood firm and told King that after all this time, with no violence having come to pass after all, even a hint of it, it was time to put this behind her." *Id.* at 49. Or, "even if Griffin thought he could not simply return Cross to her original position following LERD's determination, he still could have found a more suitable alternative for her." *Id.* at 50.

The General Counsel rejects Griffin's insistence that he had no better alternative position to reassign Cross than the one he imposed. Griffin testified that his district had a 5-6% vacancy rate, and that positions were always coming open. The GC cites the assignment of Inspector Galvez, a lower-graded employee, to the position Cross had been filling on detail, and the hiring of Inspector Phan, a lower-graded, much less senior, employee, to a position that Cross applied for in 2023, as examples of how the Agency could have treated Cross, had it been inclined to treat her fairly. *Id.* at 51.

To remedy what the GC characterizes as the Agency's unlawful, discriminatory treatment of Ms. Cross, the GC requests that she be restored to a position comparable to the one she had prior to November of 2021.

Respondent

The Respondent views the actions of its officials, Ms. King and Mr. Griffin, considerably differently than the General Counsel does. Respondent asserts that Griffin's decision in May 2022 to reassign Cross to a relief position in the Riverside Circuit was not motivated by Cross's protected activities, but rather by Griffin's legitimate interest in keeping Cross separated from King, who continued to have a sincere fear of Cross. Resp. Br. at 16-17.

The Respondent acknowledges that Ms. Cross was an active Union representative, and that she frequently used strong language in trying to represent her fellow employees. *Id.* at 19. But it insists that Griffin never harbored any animus toward either Cross or the Union. "There is absolutely no evidence that Mr. Griffin was bothered by anything Cross did for the union, much less anything she did at or shortly before the May 5, 2022, reassignment decision. . . . There is no nexus at all between the union activity by Cross and the reassignment decision by Griffin." *Id.* at 20.

The Respondent notes that Arbitrator Berger has already upheld the Agency's action to detail Cross after the October 2021 phone conversation, and it argues that the GC is collaterally estopped from challenging that award (Resp. Ex. 2) or any of the factual issues or mixed issues of fact and law found by the arbitrator. Resp. Br. at 17-18. Respondent asserts that Arbitrator Berger determined that Cross's words in that phone conversation did not constitute protected union activity, that King's perceived fear of Cross was sincere, and that Agency management did not abuse its discretion in reassigning Cross pending investigation. Therefore, Respondent further insists that the GC cannot challenge those findings in the case before us. *Id.* at 18.

Respondent then turns its focus to the analytical framework laid out in *Letterkenny* for determining whether an agency has discriminated against an employee for protected activity and thus violated § 7116(a)(2) of the Statute. *Id.* at 18-23. For the reasons stated above, it submits that the GC failed to show that Griffin was motivated by anti-union bias. But "[e]ven if the evidence were construed to find that Mr. Griffin was motivated in some small way by anti-union bias, he had a very strong legitimate reason for the reassignment." *Id.* at 17. Six months after the October phone call, when the IA investigation had been completed, Ms. King made it very clear to Griffin that she continued to fear Cross and could not effectively supervise her. This presented Griffin with an "unenviable choice" between forcing King to work with Cross or finding another job for Cross. *Id.* at 21-22. Respondent insists that Griffin's decision had nothing to do with Cross's union activity and everything to do with protecting a supervisor, and that he would have made the same decision even if Cross had engaged in no union activity. *Id.* at 17.

Respondent argues that the examples cited by the GC of disparate treatment are inapplicable to Cross's case. First, those incidents occurred in 2016 and 2018, long before Griffin came to the Alameda District, and Griffin was not aware of them. *Id.* at 15. Moreover, the misconduct allegations against those two inspectors did not affect their relationship with their supervisor, so it was not necessary to reassign them to different supervisors. *Id.* at 21. As for the decision to hire someone else for a CSI position in 2023, Griffin testified that he had no involvement in that process. *Id.* at 15-16.

ANALYSIS AND CONCLUSIONS

I do not normally comment on the performance of counsel for the parties in a decision, since I hold attorneys to a high standard at all times, but I feel it is appropriate here to applaud the skill and thoroughness with which counsel for both the GC and the Respondent litigated this case. They prepared and presented their evidence fully, presenting their theories in the best light without misrepresenting facts or the law. Although there were many issues on which they disagreed strongly, they did so respectfully. This was a complex case in many ways, and I found it more difficult than usual to reach a determination, as there are legitimate arguments to be made for both the General Counsel and the Respondent. Nevertheless, I have concluded that the weight of the evidence supports a conclusion that the Respondent refused to return Ms. Cross to her old position, or a comparable one, for unlawful reasons.

One reason I initially resisted coming to this conclusion is that I do not believe Mr. Griffin personally held a bias against the Union in general, or against Cross and her union activities specifically. As both the Respondent and the GC have noted, Griffin endured a great deal of criticism in his term as Alameda District Manager. Much of that criticism was likely attributable to the heightened tension throughout FSIS when the COVID pandemic was at its peak and employees were required to work under the most difficult conditions; it may also have been due to the fact that Mr. Griffin was not as friendly to the Union as his predecessor had been – something that both he and the Union witnesses acknowledged. But under our Statute, a manager does not need to be "friendly" to a union; he or she merely must avoid being anti-union, and I believe Griffin walked that tightrope fairly well. Despite the harsh criticism he faced from Cross, Barilla, and other Union representatives, he did not respond in kind or with animosity.

Griffin's one misstep occurred when he and FLS Henry refused to accept Ms. Cross's medical excuse. Arbitrator Berger – who was simultaneously issuing another award upholding Griffin's decision to detail Cross – found that by rejecting the medical excuse and refusing even to explain why, Griffin and Henry allowed their "feelings about the local Union's representation" to get "in the way of better judgment." GC Ex. 20 at 12, Bates 123. In other words, they had anti-union motivation.

This one misstep by Mr. Griffin is indicative, however, of a larger problem, which goes to the heart of this case. While, in my view of the evidence and my evaluation of the credibility of witnesses, Griffin personally harbored no animosity to Cross or the Union, he seems to have consistently stood by his supervisors, come hell or high water. He recognized this himself when he testified that he felt the prior District Manager's "nonconfrontational style" made the Union happy, "at the expense of the supervisors." Tr. 310-11. Unlike the General Counsel, I do not consider Griffin's less conciliatory "style" to be an indication of anti-Union animus; he is entitled to his own style. But that "style," and his actions throughout the 2021-2022 time period of this case, reflect a stubborn willingness to support his supervisors even when they were wrong.

And in this case, Ms. King was in the wrong. Unlike Mr. Griffin, King seems to have had no tolerance for push-back by a Union representative. I do not base this simply on her reaction to Cross's words on October 27, but on her overall, and repeated, characterization of Union objections to her decisions as "bullying" and "gang-like." In her affidavit to IA, she did not confine her complaints to Cross alone, but to Zamora and anyone else in the Union who objected to how she dealt with employees. *See* GC Ex. 15 at Bates 95. More than two years after the incident, she still harbored the same attitude in her hearing testimony. If she had simply complained about Cross's words on October 27, I would have been inclined to give her the benefit of the doubt regarding Union animus (as Arbitrator Berger did), because the literal meaning of Cross's promise to "go after heads" is indeed threatening. But it is clear that King's objections went beyond the words Cross uttered on October 27; instead, she interpreted any resistance from a Union representative as preventing her from "perform[ing] as a supervisor," and she interpreted the concerted activity of two or more Union representatives as "a gang-like mentality." *Id.* She seems not to have grasped the entire concept of a union as employees working **together** for mutual protection.

Griffin seemed to understand that Cross was prone to hyperbole in her efforts to perform her Union duties, and both he and his Deputy District Manager seem to have tried to talk Ms. King down a bit from her fears of Ms. Cross. But King would have none of it; when she heard that Cross was not going to be disciplined for the events of October 27, she reached out angrily to Griffin on May 5 and insisted that even then -- despite six months of calm from Cross and her Union "gang" -- her life would not be safe if Cross returned to her circuit. In this manner, Griffin allowed King's poisonous anti-Union feelings to infect his own decisionmaking, much as he had (with a different supervisor) in April 2022, when he refused to accept a medical note from Ms. Cross.

Arbitrator Berger may have come out of his hearing with a more favorable view of King's credibility than I have, but he was deciding a different issue than I am. He was deciding whether Griffin improperly detailed Cross away from King in the immediate aftermath of the October 27 phone conversation. The arbitrator credited King's account of that phone conversation, and I do too. In light of the fact that King testified that she feared retribution from Cross, and in light of the pending IA investigation of the complaint against Cross, Arbitrator Berger ruled that detailing Cross was an appropriate decision. I am not called upon to rule on that decision, but I agree that moving Cross away from King's supervision in November 2021 was appropriate, since Griffin didn't know at that time what the IA investigation would find. But I **am** called upon to rule on the legitimacy of Griffin's refusal, in May of 2022 or thereafter, to return Cross to a position comparable to the one she held in 2021. That was more than six months after the phone conversation, and Griffin had more facts and options available to him after LERD notified him that it had found no misconduct by Cross. While King may conceivably have had reasonable concerns for her safety in November 2021, immediately after Cross told her that she and Barilla would be "coming after you and . . . going for heads" if King "went after" Zamora, those concerns were no longer reasonable by May of 2022. There is no evidence whatever in the record of any Union official engaging in any gang-like activity or endangering the safety of management officials, either before October of 2021 or afterward. King was new to the region in October of 2021, so she would not have been aware of this when she was confronted by Cross, but she could see by the following May that there was nothing gang-like involving the Union. By May of 2022, both King and Griffin could see that neither Cross nor any other Union official had "come after" King, or anyone else. Nonetheless, King remained convinced that her safety was endangered by Cross, and she persuaded Griffin to punish Cross in May 2022, when Griffin had to find a position for her.

Looking at the evidence within the framework of the *Letterkenny* analysis, all parties agree that Cross had engaged in a wide variety of protected activity, leading up to the decision to detail her away from King in November 2021 as well as in the subsequent months leading up to her permanent reassignment the following May. I do not need to repeat it here, as it has already been described in detail and acknowledged.[5] Respondent insists, however, that in the next step of the analysis, the GC has failed to prove that Cross's protected activity was a motivating factor in Griffin's decision in May to reassign her where he did. It further insists that even if I find that protected activity played some part in Griffin's decision, he had a legitimate reason for his decision, and he would have taken this action even if Cross had never engaged in protected activity. I disagree with Respondent on both points.

Everything that the Agency did regarding Cross after October of 2021 was permeated by the phone conversation of October 27. King's reaction (or overreaction) to Cross's words on October 27 is inseparable from the fact that Cross was engaged in protected activity when she uttered those words, and Griffin's ultimate reassignment of Cross the following May similarly cannot be separated from the October 27 phone call. Both the initial decision to detail Cross and

[5] While Respondent asserts that Cross engaged in only minimal protected activity between November and May, I would note that the medical note-AWOL grievance arose in April of 2022, which ultimately resulted in an arbitration hearing. That is not "minimal" protected activity.

the ultimate decision to reassign her were based on King's purported (and in my view, unwarranted) fear of Cross, and King's fear of Cross was based directly on Cross's Union activity.

To review: on October 27, Cross and King first discussed an issue related to a plant Cross was assigned to; Cross then switched the subject to Zamora, saying, "if you're having issues with Zamora, it'd be better if you talk with me about it." Tr. 424. It was clear at this point that Cross was speaking to King as Zamora's Union representative, because both of them were aware that King was investigating a complaint against Zamora that had been filed by a plant official. Cross warned King that "if you go after him, Barilla and I will be going for your head." Tr. 424-25. Again, since Barilla was also a Union official, Cross's words made it clear not only that Cross was defending Zamora but that the Union as a whole would oppose any attempt by King to "go after" Zamora. Reasonable people may differ as to whether Cross's warning was a threat of violence or simply a threat to defend an employee lawfully, but her words were indisputably part and parcel of her attempt to represent an employee. Accordingly, this is not a case of mixed motives, or a pretextual motive; rather, the **sole** motivation for Cross's detail, and her subsequent permanent reassignment, was her alleged threat to Ms. King. And while Arbitrator Berger may have found Cross's alleged threat to be an acceptable reason for detailing her temporarily, that does not necessarily make it an acceptable reason for permanently reassigning her to a much less desirable job.

The next question, then, is whether Cross's comments constituted flagrant misconduct or otherwise exceeded the boundaries of protected activity. In *U.S. Dep't of the Air Force, Aerospace Maint. & Regeneration Ctr., Davis Monthan AFB, Tucson, Ariz.*, 58 FLRA 636, 636 (2003), the Authority reiterated its longstanding principle that when an employee is allegedly disciplined for conduct occurring during protected activity, a respondent's justification must necessarily show that the conduct constituted flagrant misconduct. Noting a recent D.C. Circuit Court of Appeals decision on this subject, the Authority clarified an agency's burden as showing that the disputed conduct "constituted flagrant misconduct or otherwise exceeded the boundaries of protected activity." *Dep't of the Air Force, 315th Airlift Wing v. FLRA*, 294 F.3d 192, 201 (D.C. Cir. 2002). The Authority considers a variety of factors in determining whether an employee's behavior crosses over those boundaries. *See Int'l Bhd. of Boilermakers, Local 290*, 72 FLRA 586, 589 (2021).

Looking at the totality of the circumstances surrounding the October 27 phone call, I do not consider Cross's words even close to constituting flagrant misconduct, nor did they exceed the boundaries of statutory protection. The conversation was private – no other employees were present, so there was no possibility of her language affecting the workplace as a whole or undermining employee respect for management. The allegedly threatening comment was extremely brief – essentially a single sentence – and there is no indication that it was a premeditated incident. The words themselves – "Barilla and I both are coming after you and we will be going for heads!" – are certainly threatening, but only in their most literal interpretation. In the context of a labor-management dispute, however, this literal interpretation is far-fetched and unlikely. The English language, and everyday human discourse, contain words and phrases that carry a wide variety of metaphorical and rhetorical meanings, and this is particularly true with regard to disputes and contests: we frequently say that we will "fight like hell" for a

particular outcome; we use military and warlike terms in sporting events and lawsuits, and most of the time a reasonable listener does not interpret those words as personal threats of violence. Such bellicose language is even more common in labor-management disputes; Authority case law recognizes this, and I believe this is the proper context for evaluating Cross's language on October 27.[6] As a supervisor, King should have understood that employees, and unions, are sometimes going to fight her decisions; "going after her" is simply an expression of opposition, and even when it is amplified by "going for heads," Cross's words do not constitute flagrant misconduct or otherwise exceed the boundaries of protected activity.[7] *See, e.g., U.S. Dep't of Transp., FAA, Wash., D.C.*, 64 FLRA 410, 413-15 (2010); *Dep't of the Air Force, Grissom AFB, Ind.*, 51 FLRA 7, 11-13 (1995).

I emphasize again, however, that I am not applying my analysis to Mr. Griffin's decision in November 2021 to detail Cross; rather I am applying it to his decision six months later to permanently reassign Cross. However reasonable or unreasonable Ms. King's fears of Ms. Cross may have been in the immediate aftermath of October 27, her fears were unreasonable in May 2022, when it was clear that Union officials were not endangering King or anyone else. Griffin's continued reliance on King's subjective feelings was unduly clouded by King's anti-union animus. Accordingly, I conclude that Cross's protected activity was the motivating factor in Griffin's reassignment decision.

At this point, the burden shifts to Respondent to show that Griffin had a legitimate reason to reassign Cross to the position he did, and that he would have taken this action even if Cross had never engaged in protected activity. Respondent asserts that Griffin legitimately recognized that King continued to be too afraid of Cross to be able to supervise her effectively, and that the only other available positions outside the Walnut Circuit were much farther from Cross's home. Both of these reasons demonstrate a severe lack of imagination, or desire, on Griffin's part.

First, I reject the assumption on Griffin's part that it would have been untenable for him to return Cross to the Walnut Circuit under King. Employees and supervisors get into disputes, even heated disputes, all the time, yet continue working together. Employees are regularly disciplined, file grievances, and return to the same manager's supervision. Notwithstanding

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[6] If I had any doubt whether Ms. King takes other people's words too literally, such doubt was erased when she did precisely the same thing a few months later, when Zamora suggested that Griffin "take Sabrina's muzzle off." GC Ex. 10. Not content to simply tell Zamora that she found the words offensive, King pushed management to issue Zamora a letter of instruction, which precipitated another ULP charge. While I generally do not consider events that occur after a ULP complaint, this incident is too similar to events involving Ms. Cross to be ignored.

[7] I also agree with the GC's assertion (GC Br. at 48) that if King was uncertain whether Cross truly intended to threaten her with harm, she could have better answered that question if she had asked Cross to clarify her comment: What do you mean you'll go for heads? Are you threatening to harm me? If this was too much to ask of King in the heat of her conversation, it would have been equally useful to do so the next day, possibly with her DDM present. Her failure to do so reaffirms my view that she was predisposed to assume the worst from any Union resistance; and Griffin's failure to do something of this sort in May 2022, after the IA investigation was complete and before he decided where to assign Cross, further convinces me that his blind reliance on King's subjective feelings rendered him unable to make an unbiased decision.

King's continued insistence that she was in fear of Cross, the single sentence that Cross uttered on October 27 does not support her claim that she could not supervise Cross. This is the job of District Managers like Griffin: call the two combatants into his office, counsel them on how to get along and warn Cross to avoid even implicitly threatening language or behavior. Testimony made clear that Cross's CSI job in October 2021 required only infrequent interaction with her Front-Line Supervisor. In the three months King had supervised Cross, they had only met in person three or four times and spoken on the phone five or six times. Tr. 421-22. By May of 2022, it is my view that King's continued resistance to working with Cross was based solely on anti-union animus and not on any reasonable fear. Griffin allowed himself to be bullied by King into believing that he had a binary choice of exiling Cross or supporting Union threats. Griffin's options were not binary, and he could have found a place for Cross within the Walnut Circuit. Griffin's refusal to exercise any managerial responsibility to engage in peacekeeping reflects his refusal to entertain any solutions without the full approval of the supervisors he supervised. In this context, King's animus became Griffin's animus.

Griffin's refusal to reunite Cross and King also flies in the face of the prior history of such incidents in his district, namely the Agency's response to the investigations of Mr. P and Mr. W. I recognize that those incidents are in some ways distinguishable from Cross's case, but not fully. Those incidents occurred several years before Griffin became District Manager, and he may not have even been aware of them in May 2022. But those cases are still part of the labor-management history of the Alameda District, and Griffin was responsible for carrying out his job consistently with that history. Respondent argues that P and W were accused of harassing employees at plants they supervised, not their supervisor, but in my mind that is an aggravating factor, not a mitigating one: when a FSIS employee harasses an employee of a plant he is inspecting, that reflects badly on the Agency and its statutory mission, while an employee's alleged harassment of a supervisor is something that the Agency can continue to monitor much more easily than activity at a plant. In both the P and W cases, Respondent returned the employees to their assigned plants after investigation, and in one case the employee was never even removed from the plant during the investigation. Moreover, one of the investigations determined that the alleged offender had committed a lesser form of misconduct, yet he was still returned to his prior position. What these facts show is that when IA investigations even partially clear employees of alleged misconduct, Alameda District management had a history of returning the employees to their old positions. In my view, this history carried with it a heavier burden for the Agency to find a way of returning Ms. Cross to her old position, or to a comparable one.

There is no doubt that Cross was returned to a much less desirable position than the one she held in October 2021. At the start of her career, she had spent two years working at slaughterhouses, and she bid on a patrol position as soon as she could. Tr. 175. This is not simply a matter of subjective preference; slaughterhouse inspection is objectively dirtier and more arduous than the work of a patrol inspector. Additionally, as a relief inspector, she has no control over her work schedule, which changes on a weekly basis. Griffin knew all these facts, but he defended his decision by saying he was trying to find Cross a job as close to home as possible. Again, this demonstrates a lack of imagination on Griffin's part: if he had been concerned about accommodating Cross, he would have consulted with her and the Union to find an appropriate assignment for her in May 2022. Maybe that assignment would have been back

in the Walnut Circuit, or if that was truly untenable then Griffin should have worked with the Union to find a mutually acceptable alternative. In April of 2022, just before Griffin reassigned Cross, a less qualified employee was hired for the position Cross had been filling on detail; this was not a patrol job, but it would have been preferable to the relief position she ultimately got. Griffin could have – and indeed should have – put Cross in a priority status, so that she would be noncompetitively reassigned to a patrol assignment as soon as an appropriate one became available. Griffin testified that the district had a 5-5% vacancy rate, so it is clear that at some point a patrol position would have become available that was comparable to Cross's 2021 job – if Griffin had attached any priority to doing so. Another less-qualified employee was hired in 2023 for a patrol job that Cross applied for. While that hiring decision occurred long after Griffin was reassigning her in 2022, it demonstrates that a concerted effort to prioritize Cross's reassignment to a comparable patrol position could have been successful. Instead, Griffin confined Cross to a form of work purgatory in May 2022 and then abandoned her there permanently. Griffin and King have both left the Alameda District, but Cross is still mired in her relief work at slaughtering plants.

The bottom line, so to speak, is that when the IA investigation determined that Cross had engaged in no misconduct, the Agency had a responsibility to put her back – either in her old job or a comparable one. Griffin made no such effort; instead, he seems to have briefly scanned his district's "help wanted ads," found something within (difficult) commuting distance, assigned her there, and then considered his job done. I strongly disagree. Cross was permanently reassigned in 2022 to a position that was distinctly more difficult and unpleasant than her old one; the overriding reason for her treatment was that she had engaged in protected activity that produced an over-wrought overreaction by her anti-union supervisor, and her District Manager caved in to the unreasonable demands of that supervisor.

For these reasons, I conclude that the Respondent discriminated against Santaneice Cross on account of her protected activity by reassigning her to a less desirable position, and that the Respondent did not have a legitimate, nondiscriminatory reason for doing so. This violated § 7116(a)(1) and (2) of the Statute.

Remedy

In order to remedy this unfair labor practice, the Respondent must restore Ms. Cross to the position she held on October 27, 2021, or to a comparable one. The General Counsel did not address the question of back pay, and there is no evidence in the record that Cross lost pay or benefits because of her improper reassignment. She remained as a Consumer Safety Inspector, so it would appear that there was no loss of pay, and any loss of overtime would be mere speculation. Accordingly, the appropriate remedy here is simply to restore her to a CSI position that is as close as possible to the one she held for most of 2021.

This means that she should be given a patrol assignment, not a relief position, and in a geographic area that best accommodates Ms. Cross's personal needs. This will also require that the Respondent collaborate with Ms. Cross, the Union, and the FLRA San Francisco Region's compliance officer, to ensure that the assignment best balances the Agency's needs with Ms. Cross's, and if necessary, that Cross should be given priority for such an assignment, if one is not

immediately available. The GC requests that her assignment should be in either the Walnut or Riverside circuits; I will not specify this in my Order, but by requiring the Respondent to collaborate with Ms. Cross and the Union in making an assignment, I don't believe that such specificity is necessary. It is worth noting here that since Ms. King moved out of her position in the Alameda District in 2023, she and Ms. Cross will not work together. Tr. 447-48.

Accordingly, I recommend that the Authority issue the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the U.S. Department of Agriculture, Food Safety and Inspection Service, Los Angeles, California (the Respondent), shall:

1. Cease and desist from:

   (a) Discriminating against any employee by reassigning her or him to a less desirable position because she or he engaged in activities protected by the Statute.

   (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured under the Statute.

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

   (a) Immediately restore Santaneice Cross to a non-relief patrol assignment as a Consumer Safety Inspector, the same as, or comparable to, the position she held on October 27, 2021. Such assignment shall be made in collaboration with Ms. Cross and the Union.

   (b) Post the attached Notice on forms to be provided by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Deputy Assistant Administrator for the Office of Field Operations, Food Safety and Inspection Service, and shall be posted and maintained for sixty (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) In addition to the physical posting of paper notices, the Notice shall be distributed electronically to all bargaining unit employees on the same day as the physical posting, through the Respondent's email, intranet, or other electronic media customarily used to communicate with bargaining unit

employees. The message of the email transmitted with the Notice shall state, "We are distributing the attached Notice to you pursuant to an order of an Administrative Law Judge of the Federal Labor Relations Authority in Case Number SF-CA-22-0372."

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., June 23, 2025

RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Agriculture, Food Safety and Inspection Service, Los Angeles, California, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT discriminate against any employee by reassigning her or him to a less desirable position because she or he engaged in activities protected by the Statute.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured under the Statute.

WE WILL restore Santaneice Cross to a non-relief patrol assignment as a Consumer Safety Inspector, the same as, or comparable to, the position she held on October 27, 2021. Such assignment shall be made in collaboration with Ms. Cross and the Union.

_____

U.S. Department of Agriculture
Food Safety and Inspection Service

Date: _____ By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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 Region, Federal Labor Relations Authority, whose address is: 1301 Clay Street, Suite 1180N, Oakland, CA 94612, and whose telephone number is: (510) 982-5440.