68 FLRA No. 82

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2192, AFL-CIO
(Respondent)

and

JANICE M. TRIBBETT, AN INDIVIDUAL
(Charging Party)

DE-CO-11-0278

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DECISION AND ORDER

April 21, 2015

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

In the attached decision, a Federal Labor Relations Authority (FLRA) Administrative Law Judge (the Judge) found that the Respondent (the Union) committed an unfair labor practice (ULP) under § 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute)[1] by refusing to stop deducting union dues from the Charging Party's (the employee's) pay. The Judge found that, although the employee complied with the requirements of a collective-bargaining agreement (the agreement) between the Union and the Department of Veterans Affairs (the Agency) (collectively, the parties) by timely submitting the paperwork required to cancel dues deductions (cancellation form), the Union failed to process her cancellation form. There are three substantive questions before us.

The first question is whether the Judge erred in her factual or credibility findings when she found that the employee submitted a particular cancellation form. Because the record supports the Judge's factual finding and the credibility determinations on which that finding is based, the answer is no.

The second question is whether the Judge erred when she found that, under the agreement, a cancellation form is timely if an employee sends it to the Union during the period specified in the agreement, regardless of whether the Union receives it within that period. Because the Union has not demonstrated that the Judge's interpretation of the agreement is unsupported by either the record or the plain wording of the agreement, the answer is no.

The third question is whether the Judge was biased because she allegedly credited testimony of an Agency witness regarding the proper way to submit a cancellation form. Because the Union does not explain how the Judge failed to satisfy the regulatory requirements for the conduct of a ULP hearing, the answer is no.

II. Background and Judge's Decision

The employee filed a ULP charge against the Union, and the FLRA's General Counsel (GC) issued a complaint alleging that the Union violated § 7116(b)(1) and (8) of the Statute[2] by not accepting the employee's cancellation form. The case went to a hearing before the Judge.

The Judge found that Article 41, Section 6 of the agreement (Section 6) sets forth the process by which employees may revoke authorization for the automatic deduction of their union dues from their paychecks. Under Section 6, employees may revoke such an authorization annually, on the anniversary date of their original allotment (anniversary date), by submitting a timely cancellation form to the Union. Section 6 states that, in order for a cancellation form to be "timely," it must be "submitted" to the Union on an employee's anniversary date or within twenty-one days before that date.[3] Further, Section 6 states that the Union must "certify" the date that a cancellation form is "given to" it "by date and signature" of the receiving Union representative, or by "some other appropriate date[-]stamping device."[4]

The Judge credited the employee's testimony that she completed and sent a cancellation form (the first form) to the Union by interoffice mail and fax, and to the Agency's payroll office (the payroll office) by interoffice mail, on her anniversary date. When the Agency continued to deduct union dues, the employee repeatedly asked the Union to confirm that it had received the first form and cancelled her dues deductions. After a few months, the Union vice president told the employee that the Union had not received the first form, and instructed the employee to send a new cancellation form. The employee sent a new cancellation form (the second form) to both the Union and the payroll office, using the same

[1] 5 U.S.C. § 7116(b)(1), (8).

[2] *Id.*

[3] Judge's Decision at 3 (quoting Joint Ex. 1 at 162).

[4] *Id.*

methods that she had used to send the first form. In this regard, the Judge found that the Union vice president told the employee that both fax and interoffice mail are acceptable methods for submitting a cancellation form. The Judge credited the testimony of the employee and a witness from the payroll office that the payroll office received both the first and second forms, and that an employee of the payroll office put copies of each form in the Union's mailbox. Several months after the employee submitted the second form to the Union, the Union vice president informed the employee that the Union would not process the employee's dues revocation because she had not submitted a timely cancellation form.

The Judge found that the employee "did everything that she was supposed to do" under the agreement to submit a timely cancellation form because she used two methods acceptable to the Union – fax and interoffice mail – to submit the first form to the Union on her anniversary date.[5] The Judge found the employee's account of her actions credible based on her repeated attempts to confirm that the Union received the first form. The Judge further found that even if the Union "misplaced" the first form, the Union was still responsible for processing the employee's dues revocation because she complied with the agreement to submit the first form timely.[6]

Based on the foregoing, the Judge determined that the Union violated § 7116(b)(1) and (8) of the Statute. The Judge recommended, in relevant part, that the Authority order the Union to: (1) cease and desist from not processing the employee's dues revocation; and (2) reimburse the employee for the amount of dues withheld from her pay, beginning on the date on which her dues deductions should have been terminated.

The Union filed exceptions to the Judge's decision, and the GC filed an opposition to the Union's exceptions.

III. Analysis and Conclusions

The GC argues that the Union's exceptions do not "clearly identify" the Judge's findings challenged by the Union, and do not cite to the record or applicable law.[7] Under § 2423.40(a) of the Authority's Regulations, exceptions to a Judge's decision shall consist of "[t]he specific findings, conclusions, determinations, rulings, or recommendations being challenged," and must include "[s]upporting arguments, which shall set forth, in order: all relevant facts with specific citations to the record; the issues to be addressed; and a separate argument for each issue, which shall include a discussion of applicable law."[8] To satisfy the regulatory requirements, "a party must both raise an exception and argue in support of that exception."[9]

At certain points in its exceptions, the Union describes the Judge's alleged errors using terms set forth in the Authority's Regulations as grounds for exceptions to arbitration awards[10] – specifically, that the Judge "exceeded her authority"[11] and that the decision "failed to draw its essence from the . . . agreement."[12] Nevertheless, the exceptions are sufficiently particular to inform the Authority of the bases on which the Union challenges the Judge's decision.[13] In this regard, the Union challenges the Judge's: (1) factual and credibility findings;[14] (2) interpretation of the agreement;[15] and (3) alleged bias.[16] Accordingly, we address the merits of the Union's exceptions.

A. The Judge did not err in her factual and credibility findings regarding whether the employee sent the first form.

The Union contends that the Judge erred in finding that the employee sent the first form to the Union.[17] In this regard, the Union argues that the Judge credited the employee's testimony that she did so, despite the employee's alleged failure to produce corroborating documentation, and contradictory testimony by the Union's witnesses.[18] This argument challenges the Judge's credibility determinations, which are the basis for her factual finding that the employee submitted the first form. In determining whether a judge's factual findings are supported, the Authority looks to the preponderance of the record evidence.[19] Further, the Authority has stated that it will not overrule a judge's credibility determinations unless a clear preponderance of all relevant evidence demonstrates that the determinations are incorrect.[20]

[5] *Id.* at 7-8.
[6] *Id.* at 9.
[7] Opp'n at 6.
[8] 5 C.F.R. § 2423.40(a).
[9] *Air Force Flight Test Ctr., Edwards Air Force Base, Cal.*, 55 FLRA 116, 118 (1999) (*Edwards*) (citing *IRS, Austin Dist. Office, Austin, Tex.*, 51 FLRA 1166, 1176 (1996)).
[10] 5 C.F.R. § 2425.6.
[11] Exceptions at 1-2.
[12] *Id.* at 3.
[13] *E.g.*, *Edwards*, 55 FLRA at 118.
[14] Exceptions at 1.
[15] *Id.* at 1-2.
[16] *Id.* at 2.
[17] *Id.* at 1.
[18] *Id.*
[19] *U.S. DHS, U.S. CBP, Swanton, Vt.*, 65 FLRA 1023, 1026 (2011) (citing *U.S. Dep't of Transp., FAA*, 64 FLRA 365, 368 (2009) (Member Beck concurring)).
[20] *Dep't of VA, Ralph H. Johnson Med. Ctr., Charleston, S.C.*, 57 FLRA 495, 498-99 (2001) (*Charleston*) (citing *24th Combat*

Here, the record demonstrates that both the employee's consistent testimony regarding her submission of the first form, and corroborating evidence, support the Judge's factual and credibility findings.[21] In this connection, the record evidence shows that the payroll office received copies of the first form, and that the payroll office gave the Union a copy of the first form.[22] After examining the record as a whole, we find that the Union has provided no basis for reversing the Judge's credibility or factual findings.

B. The Judge did not err in her interpretation of the agreement.

The Union challenges the Judge's interpretation of the agreement.[23] In ULP cases that turn on the meaning of a collective-bargaining agreement, the Authority has held that, where a judge's interpretation of the agreement is challenged, the Authority will determine whether the judge's interpretation is supported by the record and by the standards and principles applied by arbitrators and the federal courts.[24] And the Authority has explained that, as part of these standards, it considers the express terms of the agreement, as well as the parties' intent – as established by the wording of the clause itself, by inferences drawn from the contract as a whole, or by extrinsic evidence.[25]

Here, Section 6 provides that in order to cancel dues deductions, an employee must "*submit*[] a timely [cancellation form]," and that to be "timely," that submission must occur within the required period.[26] The Judge found that the employee's first form was timely because she submitted it to the Union within the specified period, regardless of whether the Union received it during that period.[27] The Union contends that Section 6 requires that the Union *receive* a cancellation form – and document the date of receipt with either the union representative's signature or the appropriate stamp – within the specified period in order for it to be timely.[28] But Section 6 does not use "receipt" in the wording describing what is required for timely submission. And the Judge's interpretation is consistent with the plain meaning of "submit" – to "present (a proposal, application, or other document) to a person or body for consideration or judgment."[29] The Union's assertion regarding the meaning of the provision is not, by itself, sufficient to establish a meaning that is different from that provision's express wording.[30] Further, the record reveals no extrinsic evidence to demonstrate that it was the parties' intent, when drafting the agreement, that the word "submit" in Section 6 means that the Union must "receive[]" a cancellation form within the specified period.[31]

In addition, the Union argues that, absent the documented date as proof of receipt, the Judge could not find that the employee timely submitted the first form.[32] To support its argument that documented receipt is required for timeliness, the Union relies on the final sentence of Section 6,[33] which states that the Union must "certify by date and signature [when a cancellation form] is given to the [U]nion."[34] But that sentence is *not* part of the wording describing what is required for a cancellation form to be timely.[35]

Moreover, the Union argues that the Judge erred by concluding that sending a cancellation form through interoffice mail satisfies the requirement of "timely submission."[36] But the record demonstrates that the Union's vice president stated – in a signed affidavit,[37] in hearing testimony,[38] and in emails to the employee[39] – that employees may submit a cancellation form by interoffice mail. Thus, the record supports the Judge's interpretation of this aspect of the agreement. And to the extent that the Union challenges the Judge's contractual interpretation by disputing her credibility and factual findings regarding the employee's timely submission of the first form by interoffice mail, as discussed above, we have rejected the Union's challenges to those findings.

Support Grp., Howard Air Force Base, Rep. of Pan., 55 FLRA 273, 279 (1999)).

[21] GC's Exs. 3, 21; Tr. at 23-24, 72, 89-91; *see also* GC's Exs. 4-11, 14, 18-20, 22-24; Resp.'s Ex. 3; Tr. at 27-33, 36-37, 42, 46-52.

[22] GC's Exs. 15, 21; Tr. at 90-91, 106-07.

[23] Exceptions at 2.

[24] *U.S. Dep't of VA, N. Ariz. VA Health Care Sys., Prescott, Ariz.*, 66 FLRA 963, 965 (2012) (citing *IRS, Wash., D.C.*, 47 FLRA 1091, 1110 (1993) (*IRS*)); *Charleston*, 57 FLRA at 498.

[25] *IRS*, 47 FLRA at 1110 (citing *U.S. Dep't of HHS, SSA, Balt., Md. v. FLRA*, 976 F.2d 229, 235 (4th Cir. 1992) (*HHS*); *Local Union 1395, Int'l Bhd. of Elec. Workers, AFL-CIO v. NLRB*, 797 F.2d 1027, 1033 (D.C. Cir. 1986)).

[26] Joint Ex. 1 at 162 (emphasis added).

[27] Judge's Decision at 8.

[28] Exceptions at 2.

[29] *New Oxford American Dictionary* 1734 (3d ed. 2010).

[30] *HHS*, 976 F.2d at 233 (stating that a union's "colorable argument" regarding a provision's meaning does not obviate the Authority's need to apply standard methods of contractual interpretation when the meaning is disputed).

[31] Exceptions at 2.

[32] *Id.*

[33] *Id.* at 1-2.

[34] Judge's Decision at 3.

[35] *Id.*

[36] Exceptions at 1.

[37] GC's Ex. 27; Tr. at 127, 132, 136.

[38] Tr. at 121-22, 128-30.

[39] GC's Exs. 12, 13.

Based on the foregoing, we find that the record supports the Judge's interpretation of the agreement, and that the Union's arguments provide no basis for finding that the Judge erred in that regard.

C. The Union has not demonstrated that the Judge was biased.

The Union argues that the Judge was biased because she "accepted as fact" testimony from an Agency witness that: (1) interoffice mail is an appropriate way to submit a cancellation form timely; and (2) "such form should be submitted to payroll."[40] Section 2423.31 of the Authority's Regulations sets forth the standard of conduct for a ULP hearing held by an administrative law judge.[41] Specifically, § 2423.31(a) provides, in pertinent part, that the judge "shall conduct the hearing in a fair, impartial, and judicial manner."[42] Here, the Union does not explain how the Judge failed to conduct the hearing in a fair, impartial, and judicial manner. Moreover, the record does not support the Union's characterization of the testimony. In this regard, the record demonstrates that: (1) the Union vice president, not the management witness, stated that interoffice mail was an acceptable way to submit a cancellation form;[43] and (2) the management testimony was not that the employee should submit her cancellation form to payroll, but that an administrative employee assisted the employee by providing her with interoffice mail envelopes and contacting the payroll office on her behalf.[44] Accordingly, the Union's arguments are unfounded and provide no basis for finding that the Judge was biased.

IV. Order

Pursuant to § 2423.41(c) of the Authority's Regulations[45] and § 7118 of the Statute,[46] the Union shall:

1. Cease and desist from:

(a) Refusing to honor timely dues-withholding requests received at the Union office.

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

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

(a) Make the employee whole for all dues and monies that were withheld from her paycheck since September 15, 2010, because her revocation request was not processed.

(b) Post at its business office, and in all places where notices to bargaining-unit employees represented by the Union are posted, copies of the attached notice on forms to be furnished by the FLRA. Upon receipt of such forms, they shall be signed by the president of the Union, and shall be posted and maintained for sixty 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. On the same day that the notice is physically posted, it must be disseminated to all bargaining-unit employees by email or other electronic media customarily used to communicate with employees.

(c) Submit appropriate signed copies of the notice to the Director, Veterans Affairs, St. Louis, Missouri, for posting in conspicuous places where bargaining-unit employees represented by the Union are located. This notice will be posted by email on the same day that the notice is physically posted.

(d) Pursuant to § 2423.41(e) of the Authority's Regulations,[47] notify the Regional Director of the Denver Regional Office, FLRA, in writing, within thirty days from the date of this order, as to what steps have been taken to comply.

[40] Exceptions at 2.
[41] 5 C.F.R. § 2423.31.
[42] *Id.* § 2423.31(a); *see, e.g., U.S. Dep't of HUD, La. State Office, New Orleans, La.*, 57 FLRA 102, 104 (2001) (finding that the judge was biased by failing to grant GC's "reasonable" and "compelling" request for postponement when counsel was taken to the emergency room).
[43] GC's Exs. 12, 13, 27; Tr. at 121-22, 127, 128-30, 132, 136.
[44] Tr. at 89-91, 95-96.
[45] 5 C.F.R. § 2423.41(c).
[46] 5 U.S.C. § 7118.
[47] 5 C.F.R. § 2423.41(e).

NOTICE TO ALL MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority (FLRA) has found that the American Federation of Government Employees, Local 2192, AFL-CIO (the Union), 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 fail or refuse to honor timely dues-withholding requests received at the Union office.

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

WE WILL make Janice M. Tribbett whole for dues wrongfully withheld because her timely request to revoke dues was not processed.

_____
American Federation of Government Employees,
Local 2192, AFL-CIO

Dated: _____ By: _____
(Signature) (President)

This notice must remain posted for sixty 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 any of its provisions, they may communicate directly with the Regional Director, Denver Regional Office, FLRA, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.

Office of Administrative Law Judges

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2192, AFL-CIO
Respondent

AND

JANICE M. TRIBBETT, An Individual
Charging Party

Case No. DE-CO-11-0278

Katie A. Smith
For the General Counsel

William M. Tyler
Christina Nunn
For the Respondent

Janice M. Tribbett
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (Authority/FLRA), part 2423.

On April 20, 2011, Janice M. Tribbett (Tribbett), an individual, filed an unfair labor practice (ULP) charge against the American Federation of Government Employees, Local 2192, AFL-CIO (Union/AFGE Local 2192/Respondent), with the Denver Regional Office of the FLRA. After an investigation, the Denver Regional Director issued a complaint and notice of hearing on November 30, 2011, alleging that the Union violated section 7116(b)(1) and (8) of the Statute by failing and refusing to process Tribbett's Cancellation of Payroll Deductions for Labor Organization Dues, Form SF 1188 (SF 1188), and by continuing to deduct union dues from her paycheck through September 2011. On December 27, 2011, the Respondent filed an Answer to the complaint, in which it admitted some facts, but denied others, and denied that it violated the Statute.

A hearing in this matter was on February 10, 2012, in St. Louis, Missouri. The parties were afforded a full opportunity to be represented, to be heard, to examine witnesses, to introduce evidence, and to argue orally. Both the General Counsel and Respondent filed timely briefs that have been duly considered.

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

FINDINGS OF FACT

The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Department of Veterans Affairs (DVA). (G.C. Exs. 1(b) & (c)). AFGE Local 2192 is an agent of AFGE for the purposes of representing employees at the DVA Regional Office, St. Louis, Missouri (Agency) in the unit described above. (G.C. Exs. 1(b) & (c)). Bill Tyler is the union president; Vivian Cook is the vice president. Cook generally handled membership issues on behalf of the Union. (Tr. 21).

Janice M. Tribbett is an employee under 5 U.S.C. § 7103(a)(2). Tribbett began working at the Agency at the VA Liaison Office (VALO) in North St. Louis on September 13, 2009. (G.C. Exs. 1(b) & (c); Tr. 18). There are at least three work locations for the VA in St. Louis, including the VALO office where Tribbett works, the Regional Office where AFGE Local 2192 has an office, and the VA Records Management Office. VALO communicates with the other locations through interoffice mail, which is distributed between offices on a daily basis. (Tr. 88, 98, 99).

Tribbett is in the bargaining unit represented by the Respondent and joined AFGE Local 2192 during her orientation for work, on September 15, 2009. (Jt. Ex. 2; Tr. 19). Thereafter, September 15 was her anniversary date for joining the Union. (Tr. 19). Tribbett first attempted to terminate her Union membership in December 2009, but it was denied because she had not been in the Union for a year. In September 2010, Tribbett again decided to terminate her Union membership and sent an e-mail to Vivian Cook, the acting President, telling her that she wished to resign. This e-mail, dated September 8, 2010, told Cook that Tribbett's anniversary date was September 15 and that she wished to cancel her union membership. (G.C. Ex. 2; Tr. 21-22).

Tribbett did not hear back from Cook and referred to her own copy of the Master Agreement (MA) for the procedures for resigning. Article 41, Section 6 of

the MA sets forth the procedures for dues revocation and states:

> A. Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely SF 1188 to the union representatives designated for such purpose. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) calendar days prior to the anniversary date. The union representative must certify by date and signature the date the SF 1188 is given to the union representative or by some other appropriate date stamping device.
>
> B. The union official will, by reference to the remittance listing, determine the anniversary date of the allotment. The ending date of the pay period in which the anniversary date occurs will be entered in Item 6 on the SF 1188. The entry will be initiated by the union official who will then deliver the form to the Fiscal Office prior to the close of business of the Friday following the date entered in Item 6. If, through error of the Union, an SF 1188 is received in the Fiscal Office later than the agreed-to-date, the Fiscal Office will process the form at the earliest possible time, but no later than the first pay period following receipt. Union representatives may be in a duty status while receiving and processing the SF 1188 and will be released from normal duties to carry out these duties under local release procedures.

(Jt. Ex. 1 at p. 162).

According to Tribbett's testimony, after reviewing this section, she downloaded the SF 1188 form from the shared drive for all VA employees and filled it out. On September 15, 2010, Tribbett then consulted with Elizabeth Signall in her office about how to get the form to the union office. Signall is the head administrative person at that work location and assists employees in these types of matters. Signall told Tribbett that interoffice mail is the standard way that the Agency sends documents. She showed Tribbett what envelopes to use and gave her instructions on how to address it so that it got to the union official at the union office. Tribbett also sent a copy to the payroll office through interoffice mail. She put both documents in the outgoing mail together. (G.C. Ex. 3; Tr. 22-24). Tribbett also asserts that she faxed a copy of the SF 1188 to the Union on that same date, September 15, 2010. (Tr. 24-25). She did not retain a confirmation of the fax, but did stay at the machine to make sure it was working and it gave her a sent message. (Tr. 26). Tribbett retained a copy of her completed SF 1188 dated September 15 and wrote "via fax and interoffice mail" on the top. (G.C. Ex. 3; Tr. 25).

Tribbett did not hear anything back from the Union and on September 30, 2010, sent an e-mail to Tyler and Cook asking for confirmation of receipt of her resignation. (G.C. Ex. 4; Tr. 26). She had waited until September 30 to see whether her dues were still being deducted from her paycheck. (Tr. 27). She did not receive a response from the Union. (Tr. 28).

On October 6, Tribbett received a Union e-mail to members asking for volunteers and she responded to that e-mail, again asking for confirmation that her membership had been cancelled. (G.C. Ex. 5; Tr. 28-29). Cook responded on October 7, stating that she would check. (G.C. Ex. 6; Tr. 29). Tribbett waited until October 12 and then e-mailed Cook again requesting confirmation that her membership had been cancelled. (Tr. 29-30). Tribbett did not receive any response. Tribbett continued to send e-mails to Cook regarding cancelling her membership, with no response from the Union. (G.C. Exs. 7-11; Tr. 30-32, 37).

After her last e-mail on November 1, Cook telephoned Tribbett the same day. Cook informed Tribbett that she had not received the September 15 SF 1188. Tribbett offered to send her a copy, but Cook told her to send a new SF 1188 by fax. Tribbett then downloaded a new form, filled it out and dated it that same date. She noted that her anniversary date was September 15. She then faxed the form to the Union and sent a copy through the interoffice mail. (Jt. Ex. 3; Tr. 38-39). She also sent the latest form to the payroll office through the interoffice mail. (Tr. 39).

On November 2, Cook e-mailed Tribbett telling her to complete the SF 1188 and to fax or send through interoffice mail. (G.C. Ex. 12; Tr. 40). Tribbett responded by e-mail that she had already done both. (G.C. Ex. 13; Tr. 40-41).

At this point, Tribbett thought the matter was taken care of and that she would no longer be a member of the Union and have dues deducted from her paycheck. In the next pay period, however, dues were still being deducted. (Tr. 41). After two pay periods of dues still being deducted, she contacted Cook again, on November 30. (G.C. Ex. 14; Tr. 42). She stated that

dues were still being deducted and requested that they stop the dues deductions and refund what had been collected since her anniversary date. (Tr. 42).

Tribbett complained to Signall about her problems with getting her dues stopped. Signall sent her an e-mail that she had spoken to John Livingston in the payroll office and asked him if he had received her SF 1188 through the interoffice mail. Livingston said that they had received the SF 1188 (both September 15 and November 1), but could not process until the Union signed off. (G.C. Ex. 15; Tr. 43-44).

Tribbett did not hear from the Union in December. She did have a visit from one of the stewards, Robert Pearson, and she told him of her attempts to rescind her union membership. (Tr. 46). She also sent him an e-mail on December 13, but did not get a response. (G.C. Ex. 16; Tr. 47). Tribbett also contacted the AFGE District 9 office for assistance in this matter. (Tr. 48).

Getting no satisfaction from her attempts to contact the Union by e-mail, Tribbett decided to attend a Union meeting on Saturday, January 8, 2011. This meeting was actually scheduled to discuss the parties' new master agreement which was pending a vote by the membership. Tribbett was not at the meeting for long. She waited for an opportunity to speak and asked Cook about her resignation and about her saying the union had not received the form. Tribbett told her that she had sent the form and then sent a second form as requested. Cook told Tribbett she would look into the situation on Monday. Tribbett then left the meeting. (Tr. 54).

Cook sent Tribbett an e-mail on Monday, January 10, 2011, stating that she had to research the issue and would send Tribbett the information. (G.C. Ex. 22; Tr. 55).

Tribbett continued to wait; on February 3, she emailed Cook and a number of Union officials and demanded that Cook cease her dues deduction. Cook responded on February 7, refuting some of the things Tribbett had said. Cook informed Tribbett that the Union did not receive her SF 1188 in a timely manner and that next year she should submit it in a timely way. (G.C. Ex. 24; Tr. 58-59).

On February 8, Cook e-mailed Tribbett, with copies to the district staff, Tyler, Pearson and other Union people, and told her that her resignation was not timely received (referring to the November 1 SF 1188). She told Tribbett to follow the contract guidelines and send her form in a timely manner. (G.C. Ex. 24; Tr. 60).

POSITIONS OF THE PARTIES

General Counsel

Counsel for the General Counsel (GC) asserts that Respondent violated section 7116(b)(1) and (8) of the Statute when it failed and refused to process Tribbett's September 15, 2010, SF 1188 and continued to deduct union dues from her paycheck through September 2011. Respondent's conduct constitutes an unlawful interference with Tribbett's section 7115 right to revoke her dues withholding on annual intervals. Further, Respondent's conduct constitutes an unlawful interference with Tribbett's section 7102 right to refrain from assisting a labor organization.

The GC asserts that Tribbett timely submitted her SF 1188 on September 15, 2010, her anniversary date as a member of AFGE Local 2192, by both interoffice mail and by facsimile copy, both acceptable means of communication between an employee and the union. (G.C. Exs. 12, 27; Tr. 121, 122, 128).

The GC asserts that Respondent's denial that it received Tribbett's September 15 SF 1188 should be rejected as not credible. The GC asserts that Cook's testimony regarding acceptable methods of submission of SF 1188s was evasive and inconsistent, although she eventually agreed that interoffice mail was an acceptable means of delivery. (Tr. 121, 122, 128). The GC further asserts that Cook's testimony regarding her conversations with Tribbett on November 1, 2010 and January 8, 2011, were inconsistent with other record evidence.

With respect to the November 1 conversation, Tribbett testified that she offered to send Cook a copy of the September 15 SF 1188 that she had retained in her personal records, but Cook instructed her to complete a new SF 1188. (Tr. 38). In contrast, Cook testified that during the phone call she requested that Tribbett send in a copy of documentation showing that she had submitted a September 15 SF 1188 to the Union. Her follow-up e-mail to Tribbett on November 2 made no reference to any request for proof. (G.C. Ex. 12; Tr. 141, 142). The e-mail refers to "please complete SF 1188 . . . you can fax it to the Union office . . . or send through interoffice mail . . . . (G.C. Ex. 12).

Regarding the January 8, 2011, conversation, Tribbett testified that at the union meeting, she raised the issue of her ongoing dues deductions and Cook told her she would look into it on Monday. (Tr. 54). In contrast, Cook and Nunn testified that Cook responded to Tribbett's questions by asking Tribbett to provide proof that she had submitted her form. (Tr. 115, 154). But Cook's subsequent e-mails to Tribbett corroborate Tribbett's testimony and made no reference to any

request that Tribbett provide proof of the September 15 submission. (G.C. Ex. 22; Tr. 54, 115, 154).

The GC asserts that Tribbett submitted her September 15 SF 1188 to the Respondent by accepted methods of delivery, both through interoffice mail and by facsimile copy. She also mailed a copy of her September 15 SF 1188 to the Agency's payroll department on the same date, which was received by that office. The payroll department is located in the same building as the Union. This undermines the Union's contention that it did not receive the same form, submitted the same day in the same manner.

Additionally, Tribbett's dogged persistence in contacting Respondent to request confirmation that it had received and process her September 15 SF 1188 supports her testimony that she timely submitted her request to revoke her dues deduction. Tribbett began seeking this confirmation within two weeks of submitting her SF 1188, when dues continued to be deducted from her pay, and continued to contact Respondent on a regular basis for over four months. Clearly, Tribbett's tenacity was due to the fact that she had properly submitted her SF 1188 to Respondent on her anniversary date.

Respondent

The Respondent asserts that Tribbett did not follow the contract language of Article 41, Section 6 in trying to revoke her dues deduction. The employee is responsible for giving the SF 1188 to the union representative and Tribbett failed to do so. Allegedly, she submitted her SF 1188 by interoffice mail and by facsimile. However, she was unable to produce a fax confirmation. She subsequently sent a SF 1188 to the Union in November 2010, which was untimely and processed as any other untimely received form.

The Union asserts credibility issues with Tribbett. While she claims she first wanted to get out of the Union on her anniversary date, the evidence shows that she attempted to get out of the Union the prior year, in December 2009. The Union routinely informs employees of the process for submitting SF 1188s on request and when such a form is untimely. The Union asserts that Tribbett knew the process and it is likely that she never submitted such a form in September. When asked for a copy of the form, she never submitted such to the Union.

The GC's witnesses states that the union did not receive the forms, but rather the forms were in finance, that finance placed them in the union mail box and they were never picked up. However testimony from finance showed that the union does not have a mailbox and that no copy of an SF 1188 dated September 2010 was received. Even if payroll had the form, payroll is not a designated union official and any submission received by payroll cannot be used as an official date of union receipt.

Respondent denies ever receiving a timely filed SF 1188 from Tribbett in September 2010. Respondent followed all rules and regulations governing this matter and it denies any violation of the Statute.

DISCUSSION AND CONCLUSIONS

Section 7115 of the Statute (Allotments to Representatives) authorizes employees both to establish and to revoke dues withholding allotments from their pay. The only condition that section 7115 imposes on the revocation of an employee's dues withholding authorization is contained in the last sentence of section 7115(a). That sentence provides that an employee's assignment "may not be revoked for a period of 1 year."

The Authority has recognized that "parties may define through negotiations the procedures for implementing section 7115" of the Statute, so long as those procedures do not infringe on employees' rights. *Fed. Employees Metal Trades Council, AFL-CIO, Mare Island Naval Shipyard*, 47 FLRA 1289, 1294 (1993). To ensure that employee rights are not infringed, any procedures negotiated by the parties for the processing of dues revocation requests must conform with the guarantee in section 7115 that employees remain free to revoke their dues authorization on annual intervals. *AFGE, AFL-CIO*, 51 FLRA 1427 (1996) (*AFGE*). A union violates section 7116(b)(1) and (8) of the Statute when it interferes with, restrains, or coerces employees in the exercise of the rights guaranteed by section 7115 to revoke their dues withholding authorizations after only one year. *AFGE*, 51 FLRA at 1438. In addition, when a union interferes with an employee's right to revoke their dues withholding authorization, the union interferes with, restrains, or coerces the employee in the exercise of their right under section 7102 to refrain from joining or assisting a labor organization. *Id.*

Here, as in *AFGE*, Tribbett did everything that she was supposed to do under the MA to submit a timely SF 1188. It is clear that hand-delivery, facsimile, and interoffice mail are all acceptable methods by which an employee can submit SF 1188s to the Union. Tribbett used two of these accepted methods, facsimile and interoffice mail, to submit her SF 1188 to the Union on her anniversary date. Following this submission, Tribbett "had a right to assume that the Union received and would process her Form 1188" once it was delivered to an address and facsimile number that the Union held out for itself. After Tribbett timely submitted her SF 1188 and

made repeated contacts to Respondent regarding this submission, including have the Payroll Department provide Respondent with its copies of her forms, it was incumbent on Respondent to honor the submission by accepting a copy (or a newly executed form) to forward to the Payroll Department for processing.

The parties' Master Agreement sets out the method employees are to use in order to revoke their dues withholding authorizations. According to Article 41, Section 6 employees are only allowed to revoke their dues withholding once a year on the anniversary of their original allotment. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date and twenty-one calendar days prior to the anniversary date.

The evidence is clear that Tribbett's anniversary date for joining the Union was September 15 and the Union does not challenge this date at any time. The evidence further establishes that Janice Tribbett was well aware of the conditions required to timely submit an SF 1188 to revoke her dues withholding authorization. She testified that she reviewed the MA and made arrangements to come in early on September 15 in order to submit her SF 1188 to the Union on her anniversary date.

According to Tribbett, she used the address and fax number posted by the Union in sending her SF 1188. She spoke with Signall, an administrative aide, regarding the proper use of interoffice mail and submitted her dated and signed SF 1188 to the Union through the interoffice mail. She also faxed a copy of the dated and signed SF 1188 to the Union, although she did not obtain a written confirmation. Tribbett also sent a copy of the dated and signed SF 1188 to the Agency's payroll department. The evidence shows that both her September 15 SF 1188 and a later November 1 SF 1188 were received by payroll.

Tribbett's actions following September 15 show that she expected the Union would receive and process her SF 1188 to have her dues withholding terminated. As her dues continued to be deducted from her pay, she became more and more frustrated in her attempts to have the Union process her SF 1188. Her frustration is clear in her communications with the Union and her actions consistent with someone who believed she had timely submitted her SF 1188. I do not find that sending a second SF 1188 on November 1 is inconsistent and that she was, in fact, responding to the request of Ms. Cook to submit a new form. I credit Tribbett's account of her communications and that she submitted the new form on request and also attached a copy of her original September 15 SF 1188. I find that Tribbett followed the directions of the MA with regard to submission of an SF 1188 and that she had every right to expect that the Union would receive and process her request.

The record evidence also reflects some internal confusion within the Union, with the Union president being absent for an extended period of time due to illness and the Union vice president also being absent for some days in September due to illness. Whether Tribbett's SF 1188 was misplaced in some way at the Union office has no bearing on my ultimate decision. Having found that Tribbett did all she could to follow the directions regarding submitting her SF 1188 to the Union in a timely manner, it then becomes the Union's responsibility to process such an SF 1188 in order to terminate her dues withholding. Having failed to do so, I find that the Union violated section 7116(b)(1) and (8) of the Statute.

REMEDY

As requested by the General Counsel, I will order an appropriate cease and desist order to be signed by the President of AFGE Local 2192. In accordance with the Authority's recent decision that unfair labor practice notices should, as a matter of course, be posted on bulletin boards and electronically whenever an agency uses such methods to communicate with bargaining unit employees, such postings are ordered. *See U.S. Dep't of Justice, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014). The evidence reflects that AFGE Local 2192 uses such methods to communicate with its members and bargaining unit employees. I further find that the Respondent should reimburse Tribbett the amount of dues withheld from her pay since September 15, 2010, which according to the record evidence, is an amount of $455.00.

It is therefore recommended that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the American Federation of Government Employees, Local 2192, AFL-CIO, shall:

1. Cease and desist from:

(a) Refusing to honor timely dues withholding requests received at the office of the American Federation of Government Employees, Local 2192, AFL-CIO (Union/AFGE).

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

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

(a) Make Janice M. Tribbett whole for all dues and monies which were withheld from her paycheck since September 15, 2010, because her revocation request was not processed.

(b) Post at its business office and in all places where notices to bargaining unit employees represented by AFGE Local 2192 are posted, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President, AFGE Local 2192, and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material. On the same date the Notice is physically posted, it must be disseminated to all bargaining unit employees by e-mail or other electronic media customarily used to communicate with employees.

(c) Submit appropriate signed copies of the Notice to the Director, Veterans Affairs, St. Louis, Missouri, for posting in conspicuous places where bargaining unit employees represented by AFGE Local 2192 are located. This Notice will be posted by email on the same day that the Notice is physically posted.

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

Issued, Washington, D.C., September 15, 2014

_____

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the American Federation of Government Employees, Local 2192, AFL-CIO, violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to honor timely dues withholding requests received at the office of the American Federation of Government Employees, Local 2192, AFL-CIO.

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

WE WILL make Janice M. Tribbett whole for dues wrongfully withheld because her timely request to revoke dues was not processed.

_____

American Federation of Government Employees,
Local 2192, AFL-CIO

Dated:_____ By:_____
President, AFGE, Local 2192

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Denver Regional Office, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80804, and whose telephone number is: 303-844-5224.