

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS)	
ASSOCIATION, THOMAS LIGHTHALL,)	
and JAMES FRITSCH,)	
Charging Parties,)	Unfair Labor Practice
v.)	<u>Charge No. 00-02-275</u>
STATE OF DELAWARE, DEPARTMENT OF)	
CORRECTION, PATRICK CIRWITHIAN,)	
AVERY HARMON,)	
Respondents.)	

Appearances

Douglas B. Catts, Esq., Schmittinger & Rodriguez, for DCOA
Jerry M. Cutler, SPO Office of Labor Relations, for DOC

BACKGROUND

The Delaware Correctional Officers Association (“DCOA”) is an employee organization within the meaning of §1302(h) of the Public Employment Relations Act, 19 Del. Chapter 13, 1994 (“PERA”). DCOA is the exclusive bargaining representative of uniformed correctional officers of the Delaware Department of Correction (“DOC”), within the meaning of §1302(i) of the Act.

The Department of Correction is an agency of the State of Delaware (“State”), which is a public employer within the meaning of §1302(m) of the Act.

On February 14, 2000, DCOA filed this unfair labor practice charge alleging anti-union statements by Patrick Cirwithian, DOC Food Service Director, (“Mr. Cirwithian”) and Avery Harmon, Food Service Director I, (“Mr. Harmon”) and that James Fritsch (“C/O Fritsch”) and

Thomas Lighthall (“C/O Lighthall”) were not promoted to the position of C/O Cook Manager because of their union activity. DCOA contends the State has violated Section 1303(3) and Section 1307(a)(1), (a)(3), (a)(4) and (a)(6) of the Act.¹

On February 22, 2000, the State filed its Answer denying the Charge and setting forth New Matter. On March 2, 2000, DCOA filed its Response to the New Matter.

A hearing was held on May 16 and June 12, 2000, at which time the parties presented testimony and documentary evidence in support of their respective positions. Closing argument was provided in written post-hearing briefs filed with the Public Employment Relations Board (PERB) on September 8 and September 26, 2000. The following decision results from the record thus created by the parties.

ISSUE

Whether the State, through its managers, engaged in conduct in violation of
19 Del.C. §1307(a)(1), (a)(3), (a)(4) and (a)(6), as alleged?

PRINCIPAL POSITIONS OF THE PARTIES

Charging Parties: DCOA alleges Mr. Cirwithian and Mr. Harmon, as management employees of DOC are designated representatives of the State. Bargaining unit employees were warned that those who actively participated in union activities would not advance in DOC. Comments they made concerning union activity were intended to and did, in fact, intimidate

¹ 19 Del.C. §1303, Public employee rights.

(3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection in so far as any such activity is not prohibited by this chapter or any other law of the State

19 Del.C. §1307, Unfair labor practices.

It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.
- (6) Refuse or fail to comply with any provision of this chapter.

bargaining unit employees from exercising their statutory rights to organize and join an employee organization, negotiate collectively and grieve through representatives of their own choosing and otherwise engage in concerted activity intended to further these objectives. This conduct violates not only §1307 (a)(1), of the Act, but also Governor Carper's Executive Order No. 72, entitled State Employees and the Right to Organization and Effective Union Representation.

DCOA also alleges promotion of bargaining unit employees constitutes a term and condition of employment, as that term is used in §1307(a)(3). DCOA contends that union-related questions asked during the second interview for the position of C/O Cook Manager were improper and tainted the promotional procedure by reinforcing the earlier anti-union comments of Mr. Cirwithian and Mr. Harmon.

Although an anti-union motive is not an essential element of a §1307(a)(3) violation, the comments of Mr. Cirwithian and Mr. Harmon leave no doubt that such a motive was present. An anti-union motive is further evidenced by management's retaliatory actions in refusing to permit employees to schedule vacations and discontinuing the established procedure for relieving shifts following the filing of grievances by DCOA during the winter of 1999-2000.

Charging Parties allege DOC has engaged in a clear pattern of discriminatory behavior intended to discourage Union membership, in violation of 19 Del.C. §1307(a)(3).

An employer is prohibited from discriminating against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under the PERA. 19 Del.C. §1307(a)(4). DCOA alleges the State violated this provision when it denied promotion to C/O Lighthall and C/O Fritsch who had been involved in grievance processing as trainees for positions as Union Stewards. C/O Fritsch subsequently served as a Union Steward.

Respondents: To establish unlawful discrimination in the hiring process, DCOA must first establish union animus. Even when union animus is shown, if the State demonstrates that the same action or result would have occurred regardless of the union animus there is no violation of

the Act. The State contends the Charging Parties have failed to prove the State has engaged in unlawful discrimination based on union activity.

The State asserts there is no credible evidence establishing that Mr. Cirwithian made anti-union statements or discriminated against any employee because of union activity. There is also no evidence establishing that Mr. Cirwithian was aware of , or inquired about C/O Lighthall's union involvement.

Nor is there any evidence establishing that Avery Harmon discriminated against any employee because of union activity. Mr. Harmon scored both C/O Lighthall and C/O Fritsch higher during the first interview than did other members of the selection panel. During the second interview, Mr. Harmon scored C/O Lighthall higher than any other panel member. Even if established, union animus on the part of Mr. Harmon did not affect the result of the selection process.

The State argues that the remedies requested by Charging Parties ² are inappropriate and unsupported by statute, case law or rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

DISCUSSION

This charge raises the following issues: 1) Are Patrick Cirwithian and Avery Harmon “designated representatives” of the State within the meaning of §1308(a) of the Act; 2) Did either Mr. Cirwithian or Mr. Harmon interfere with, restrain or coerce any employee in violation of 19 Del.C. §1307(a)(1) by making anti-union statements; 3) Did DOC, through its representatives, discourage union membership in violation of 19 Del.C. §1307(a)(3) by discriminating based on

² DCOA requests PERB find the State violated the Act as alleged and order it to :

- a) Cease and desist from engaging in conduct in violation of the Act;
- b) Promote C/O Lighthall and C/O Fritsch to the positions of C/O Cook Manager;
- c) Demote Food Service Director Cirwithian to a non-supervisory position;
- d) Demote Food Service Director I Harmon to a non-supervisory position; and
- e) Award back pay and seniority to C/O Lighthall and C/O Fritsch.

union activity during the promotional process; and 4) Did DOC violate either 19 Del.C. §1307(a)(4) and/or (a)(8) through the actions of Mr. Cirwithian and/or Mr. Harmon.

I. Are Patrick Cirwithian and Avery Harmon “designated representatives” of the State within the meaning of 19 Del.C. §1307(a)?

The “State”, as an abstract entity, is capable of committing an unfair labor practice only through those persons it employs or those persons whom it designates to act on its behalf. 19 Del.C. §1307(a). Patrick Cirwithian and Avery Harmon are employees of the State whose primary responsibilities are to manage the food service system of DOC and within the Delaware Correctional Center (“DCC”), respectively. Mr. Cirwithian’s office is physically located in the DOC Central Administration Building. He testified that he is authorized to exert control over the employees in his department and that Mr. Harmon, his immediate subordinate, has similar authority within his area of responsibility.

Mr. Harmon, a Correctional Food Service Director I, is responsible for supervising the Food Service operation at the Delaware Correctional Center, where his office is physically located. Mr. Harmon testified that, like Mr. Cirwithian, he has control over food service activities within his area of responsibility and possesses the authority to act on behalf of DOC. He can reward employees and recommend discipline.

The Notice of Vacancy for the Correctional Food Service Director dated April 7, 2000, the Notice of Vacancy for the Food Service Director I dated March 3, 1999, and the job description for the Food Service Director I, all provide, in relevant part:

PRINCIPAL ACCOUNTABILITIES:

1. Schedules, assigns, supervises and evaluates the work of employees who prepare, cook and serve food as part of a complex food service program.
2. Establishes policies and procedures for all food service activities; enforces safety and sanitary practices.
3. Oversees or participates in requisitioning all supplies, receiving, inspecting, storage and inventory of food stuffs, kitchen supplies and equipment.
4. Coordinates food service activities with other departments; investigates and resolves food quality and service complaints and personnel problems.
5. Plans or participates in planning standard and modified menus.

6. Maintains time and payroll records
7. Prepares records and reports of food service operations.
8. Interviews, hires and trains new employees and recommends on personnel actions.

The management responsibilities of Mr. Harmon and Mr. Cirwithian include the selection and direction of personnel. While performing their assigned responsibilities they act, for all intents and purposes, as the "State." The State cannot disavow responsibility for the conduct of an employee who is performing within the scope of his or her apparent authority simply because the State disagrees with the method used.

- II. Did either Mr. Cirwithian or Mr. Harmon interfere with, restrain or coerce any employee in violation of 19 Del.C. §1307(a)(1) by making anti-union statements?

C/O Lighthall testified that in mid-October, 1999, Mr. Cirwithian told him that under Cirwithian's administration seniority would not be the controlling consideration in determining promotions. Although C/O Lighthall disagreed with what he perceived to be the weight attributed to C/O Legates military experience during the promotional process, C/O Lighthall attributed no anti-union statements to Mr. Cirwithian. To the contrary, he testified, "Mr. Cirwithian did not come out directly and say, 'as long as you are affiliated with the union', no he didn't." [Transcript p. 38] Nor did any of the other witnesses attribute anti-union statements to Mr. Cirwithian.

C/O Jones testified concerning a conversation he overheard between Mr. Cirwithian and C/O Lighthall in October, 1999. C/O Lighthall had asked Mr. Cirwithian why he (Lighthall) was not promoted. In C/O Jones' opinion, Mr. Cirwithian's reply did not adequately address why C/O Lighthall failed to meet the requirements of the job. [Transcript p. 117]

DCOA's reliance upon C/O Jones' testimony is misplaced. DOC has never contended that C/O Lighthall failed to meet the requirements of the job. Rather, the consensus of the interview panel was that C/O Legates was the better qualified candidate for the position. The factors Mr. Cirwithian enumerated during the October, 1999, conversation included, "skills,

knowledge, ability, military experience, job experience . . .” C/O Jones testified that these factors, “made perfect sense to me.” [Transcript p. 117]

C/O Jones’ only participation in the discussion occurred when he inquired about the relative weight accorded military experience in the promotional process. Although C/O Jones characterized Mr. Cirwithian’s reply as “backwashing”, he attributed no anti-union statements to Mr. Cirwithian during the discussion. [Transcript p. 117]

The only allegation of anti-union statements by Mr. Cirwithian is contained in Paragraph 14, of the Charge which provides: “In the past, Mr. Cirwithian has indicated that employees are either ‘for me or against me.’ By this explanation, he has stated that individuals involved in Union activities are against him.” None of the witnesses attributed anti-union statements to Mr. Cirwithian and there is no other evidence supporting either the allegation set forth in Paragraph 14 of the Charge, or that Mr. Cirwithian otherwise made anti-union statements.

The allegations of anti-union statements by Mr. Harmon come from C/O Fritsch (a Union Steward and member of the current negotiating team), C/O Pressley (a former Union Steward) and C/O Schepens. C/O Fritsch testified that during the summer of 1999, he discussed with Mr. Harmon why he (Fritsch) had been passed over for a promotion. Mr. Harmon told C/O Fritsch he was disliked by management primarily because of his union activities. [Transcript p. 131] Mr. Harmon stated that as long as C/O Fritsch remained active in the union he would not be promoted into management. Id.

In late August, 1999, a second conversation occurred between C/O Fritsch and Mr. Harmon on the rear loading dock adjacent to the kitchen where C/O Fritsch was working at that time. During this conversation, Mr. Harmon again told C/O Fritsch that he would not be promoted into management because of his union involvement. Mr. Harmon encouraged C/O Fritsch to come to him with problems rather than filing grievances. Mr. Harmon also warned C/O Fritsch that if grievances were filed he (Mr. Harmon) “had a long memory”. [Transcript p. 133]

Mr. Harmon encouraged C/O Fritsch to sever his ties to the union if he wanted to go anyplace in management in the Food Service Department.

C/O Pressley testified that in November, 1999, Mr. Harmon engaged her in a one-on-one conversation, allegedly for the purpose of becoming acquainted with his subordinate. During that conversation Mr. Harmon told C/O Pressley that “ ... if you were in the union you were considered a troublemaker” and there was little chance of advancement. [Transcript p. 179] C/O Pressley did not believe at the time Mr. Harmon was stating Departmental policy. She construed his statement as reflecting how he personally believed things actually worked.

C/O Schepens testified that during a one-on-one conversation in Mr. Harmon’s office he asked why C/O Legates had been promoted. Mr. Harmon responded that he had previously told C/O Fritsch that as long as C/O Fritsch remained active in the union he would not be promoted. Mr. Harmon stated the same applied to C/O Lighthall. C/O Legates was promoted because he was not involved in union activities and would do whatever Mr. Harmon wanted him to do. Mr. Harmon also stated that over the long-haul he would remember who was for him and who was against him. [Transcript p. 72-74]

During a fact-finding meeting on January 19, 2000, concerning a grievance C/O Schepens had filed protesting his proposed discipline, Mr. Harmon stated “You people stir up shit. Things are going to get pretty smelly.” [Transcript p. 75] C/O Schepens attributed Mr. Harmon’s statement to the fact that several grievances had recently been filed. Mike Knight, the Food Service Supervisor at the Delaware Correctional Center was present at the time. [Transcript p. 76]

C/O Schepens testified that as retaliation for the filing of several grievances the established practice of relieving officers at the end of the shift was discontinued and for several months Correctional Officers under Mr. Harmon’s control were no longer permitted to schedule vacations. Id.

In response to these allegations, Mr. Harmon acknowledged stating that he had a long memory. His explanation was that his statement referred to the fact that an employee's record under his supervision would be important in determining who was promoted and that he had a long memory and would remember the better performers, no matter how long it took until they were promoted. Mr. Harmon otherwise denied making the statements attributed to him.

Where, as here, there is conflicting testimony concerning salient facts, credibility considerations are required. Rather than a deliberate intent to misstate the facts, conflicting testimony most often reflects an individual's perception and recollection of the disputed facts. While credibility considerations are not infallible, they do provide valid assistance in determining which of the conflicting testimony represents the more probable sequence of events.

Here, four (4) factors are of particular significance: 1) The testimony of C/O Fritsch, C/O Schepens and C/O Pressley is consistent in that the message conveyed is the same, i.e., employees who are active in the union will not be promoted; 2) The statements attributed to Mr. Harmon are straightforward and C/O Schepens and C/O Pressley, both credible witnesses, had no apparent reason to fabricate their testimony; 3) C/O Lighthall and C/O Pressley were sufficiently impressed that each subsequently gave up their positions of responsibility within the union; and 4) Food Service Supervisor Mike Knight who was allegedly present at the grievance meeting on January 19, 2000, did not testify to rebut either the comments attributed to Mr. Harmon by C/O Schepens or the testimony by C/O Schepens that he (Knight) told C/O Schepens that the change in shift relief and suspension of vacation scheduling was retaliation for the filing of grievances. [Transcript p. 77]

In considering the impact of employer statements, PERB has held both the economic dependence of the employees on their employer and the tendency of the employees to perceive implications which might be more easily dismissed by a disinterested ear, are relevant factors properly considered. Seaford Education Assn. V. Bd. Of Education, Del.PERB, ULP 88-01-020, I PERB Binder 263 (1988), citing NLRB v. Gissel Packing Co., 395 US 575 (1969). In WFFA v.

City of Wilmington (Del.PERB, ULP 93-06-085, II PERB Binder 937 (1994)), PERB found the City committed an (a)(1) violation, in part when the Deputy Chief of Fire told a subordinate Lieutenant, “people who make waves don’t get ahead” in the Fire Department, holding, “ ... it is reasonable [the] Lieutenant would have construed these comments as warning him against engaging in union activity ...” Mr. Harmon’s comments closely resemble these remarks.

The evidence of record permits no reasonable conclusion other than that Mr. Harmon made the anti-union statements attributed to him with the resulting impact, if not the intent, of intimidating the employees involved and chilling union activity.

III. Did DOC, through its representatives, discourage union membership by discriminating based on union activity during the promotional process?

In WFFA (Supra.), PERB adopted the NLRB’s Wright Line analysis for establishing causality in alleged union animus cases. Wright Line Inc., 251 NLRB 1083, 105 LRRM 1169 (1980). There are basically two types of union animus cases: those where the employer’s actions are pretextual and those in which the employer acts on dual motives. In a pretextual case, there is no legitimate business justification for the employer’s action against an employee who has engaged in protected activity and the justification put forth in defense either did not exist or was clearly not relied upon. The standard for evaluating causation in a dual motive case, on the other hand, involves a shifting burden of proof. WFFA (Supra.).

The charge concerning the promotional process clearly constitutes a dual motive allegation. The State argues there is no evidence the interview and selection process were flawed, even if the Charging Parties could show there was union animus. The charging party has the burden to establish the employee’s protected conduct was a substantial or motivating factor in the employer’s adverse employment action. In order to do this, the charging party must establish: (1) the employee engaged in protected activity; (2) the employer was aware of the employee’s protected activities; and (3) the protected activity was a substantial or motivating factor for the employer’s action. Once this *prima facie* case is established, the burden shifts to the employer to

establish the presence of a legitimate business interest which, despite the employee's protected activity, would have resulted in the same business decision. Colonial Education Assn. v. Colonial School District, Del.PERB, ULP 93-11-095, II PERB Binder 1071 (1994).

While there can be no question but that both C/O Lighthall and C/O Fritsch were involved in union activities and that at least Mr. Harmon was aware of this active union participation, DCOA has failed to establish that their protected activity was a substantial or motivating factor in the promotional process. Thirteen (13) applicants were initially interviewed for the two (2) vacancies in the C/O Cook Manager classification. The highest ranked individual following the initial interview, C/O James Gibbs, scored 96.75 and was selected to fill one (1) of the vacant positions. The next highest score of 83.75 was shared by C/O Downing, C/O Legates and C/O Lighthall. The individual scores by the panel members for C/O Lighthall were: Kenneth Kresge-88; Patrick Cirwithian-86; Avery Harmon-85; and John Clemons-76. C/O Fritsch ranked ninth with an average score of 76.25. The individual scores for C/O Fritsch were: Kenneth Kresge-81.5; Avery Mr. Harmon-80.5; Patrick Mr. Cirwithian-73.5; and John Clemmons-76.

As previously determined, the evidence failed to establish anti-union statements by Mr. Cirwithian. His scoring of both C/O Lighthall and C/O Fritsch is not inconsistent with the scores of the other panel members or the final average nor does it suggest anti-union bias on his part in evaluating the candidates during the first set of interviews.

Despite the previous finding of anti-union statements by Mr. Harmon, he rated both C/O Fritsch and C/O Lighthall above the average of all four (4) panel members. There is no evidence that his rating of either candidate at the first interview was motivated by union animus.

The cornerstone of DCOA's allegation that union animus tainted the promotional process centers on an interview question or questions concerning union activity. Paragraph 11 of the State's Answer to the Charge denies that any of the final three (3) applicants was asked about union activity. DCOA's contention that the State is bound by the admission in Paragraph 11 of

its Answer that neither C/O Downing or C/O Legates was asked about union “activity” is not dispositive of this question. The determination of whether or not union activity was improperly addressed at the second interview is reserved to the Hearing Officer. Consequently, evaluation of the testimony concerning what questions were asked of whom is both necessary and proper.

The record contains considerable testimony (much of it conflicting) concerning whether or not any question or questions asked during the second interview concerned union “activity.” All four (4) panel members testified that each of eight (8) scripted questions was asked by Mr. Cirwithian of each applicant. Neither C/O Downing nor C/O Legates were present to offer first-hand testimony concerning what questions each was asked as an applicant. The scripted questions at issue in the union activity issue are:

1. Describe your experience in policy writing.
2. Describe your experience in disciplinary and DCOA or Local 247.

Management witnesses testified these two (2) questions were intended solely to elicit information about an applicant’s knowledge of policy writing and experience and familiarity with the contractual disciplinary procedure. These purposes in asking the questions is not unreasonable. Cook Managers are expected to develop or contribute to the development of policy. Cook Managers supervise employees in the bargaining unit represented by DCOA. Thus, neither question is inherently improper or prejudicial on its face. The written comments of the four (4) panel members reflecting the answer of each applicant for the most part reflect a consensus as to each response, none of which goes beyond the scope of the question asked.

The scoring of the applicants and the reasonableness of the disputed questions asked at the second interview do not support a finding that either C/O Fritsch or C/O Lighthall was subjected to an adverse employment action which was substantially motivated by their involvement in protected activity. Consequently, there is no violation of §1307(a)(3).

1. Did DOC violate either 19 Del.C. §1307(a)(4) and/or (a)(6) through the actions of Mr. Cirwithian and/or Mr. Harmon.

Although not specifically raised in the pleadings, the issue of retaliation by management for the filing of grievances was raised during the hearing and addressed in the parties' briefs. The only evidence of this alleged retaliation was the testimony of C/O Schepens concerning management's response to the filing of grievances and a vague reference to an undefined but limited number of grievances, both of which are uncorroborated. Simply put, the record provides no valid basis upon which to resolve this particular allegation or to find a violation of 19 Del.C. §1307(a)(4)

19 Del.C. §1307(a)(6) and (b)(3), provide that it is an unfair labor practice for either a public employer or its designated representative, or a public employee, an employee organization or its designated representative, to, "refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter." The violation of one or more of the unfair labor practices set forth in §1307 of the Act constitutes a violation of the Act.

The basis for a violation of §1307(a)(6) requires comment. To apply §1307(a)(6) as an independent violation where other statutory unfair labor practice violation have been found would serve no useful purpose. To find a violation of §1307(a)(6) thus requires a violation of some provision of the Act other than the unfair labor practice provisions or the rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter. Paragraph 16 of the Charge alleges a violation of §1303(3), of the Act. Hence, the basis for finding a violation of §1307(a)(6) is present.

Other arguments raised by the parties, although considered, were of insufficient weight to impact the decision below. However, the following are briefly addressed. The alleged failure or inability of C/O Lighthall to review his test scores received no particular weight. The only evidence offered concerning this issue was conflicting testimony from Mr. Cirwithian and C/O

Lighthall. Furthermore, it is undisputed that at some point C/O Lighthall no longer pursued the opportunity to review his scoring.

The State was not permitted to introduce evidence concerning the history of promoting bargaining unit employees prior to Mr. Cirwithian and Mr. Harmon assuming their current positions. The allegations of misconduct were directed exclusively towards Mr. Cirwithian and Mr. Harmon. The culpability of the State and DOC is a function of whether their “designated representatives” engaged in conduct which violated the Act, as alleged in the Charge, not the promotional history under prior administrations.

CONCLUSIONS OF LAW

Consistent with the foregoing opinions and findings:

1. Patrick Cirwithian and Avery Harmon are designated representatives of the State of Delaware while acting within the scope of their authority as Food Service managers for the Department of Correction.
2. No statement by Patrick Cirwithian constituted a violation of 19 Del.C. §1303(3) or §1307 (a)(1), (a)(3) or (a)(6) as alleged.
3. Through the statements made by Avery Harmon, an employee of DOC, an agency of the State, the State and Avery Harmon violated 19 Del.C. §1303(3) and §1307(a)(1), (a)(3) and (a)(6) as alleged.
4. Through the statements made by Avery Harmon, an employee of DOC, an agency of the State, the State did not violate 19 Del.C. §1307(a)(4) as alleged.
5. The promotion selection procedure did not constitute a violation of 19 Del.C. 1303(3) or §1307(a)(1), (a)(3), (a)(4) or (a)(6), as alleged.

WHEREFORE, the State is hereby ordered to:

- (3) Cease and desist from engaging in conduct which tends to interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (4) Within ten (10) days of receipt of the Notice of Determination from the Public Employment Relations Board, post the notice in all areas where notices of general interest to the bargaining unit employees are normally posted, including but not limited to all locations to which bargaining unit employees are normally assigned.
- (5) Refrain from taking any retaliatory actions against members of DCOA.

IT IS SO ORDERED.

DATED: October 27, 2000

/s/ Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Direct