Form Exempt Under 44 U.S.C. 3512

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

CHARGE AGAINST AN AGENCY

FOR FLRA USE ONLY

Case No. AT-CA-13-0188

Date Filed 1/14/13

Complete instructions are on the back of this form.

1. Charged Activity or Agency
Name: 325th Fighter Wing
Address: 501 Illinois Avenue, Ste. 1
Tyndall AFB, FL 32403-5549
Tel.#: (850) 283-2648 Ext.
Fax#: ( )

2. Charging Party (Labor Organization or Individual)
Name: AFGE Local 1113
Address: P.O. Box 40116
Tyndall AFB, FL 32403-0116
Tel.#: (850) 896-2250 Ext.
Fax#: (850) 283-4744

3. Charged Activity or Agency Contact Information
Name: Chris Smith
Title: Civilian Personnel Officer
Address: 445 Suwannee Road, Ste. 238
Tyndall AFB, FL 32403
Tel.#: (850) 283-3203 Ext.
Fax#: ( )

4. Charging Party Contact Information
Name: David Nash
Title: Local President
Address: P.O. Box 40116
Tyndall AFB, FL 32403-0116
Tel.#: (850) 896-2250 Ext.
Fax#: (850) 283-4744

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and (2)(1)(4)(5)(7)

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

See attached.

7. Have you or anyone else raised this matter in any other procedure? ✓ No ___ Yes If yes, where? [see reverse] _____

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] ☐ Fax ☐ 1st Class Mail ☐ In Person ☑ Commercial Delivery ☐ Certified Mail

David Nash
Type or Print Your Name

Your Signature

1/9/2013
Date

27 November 2012

Sequence of Events:

Approximately 1300, Capt Ian Duggan, accompanied by the first shirt, MSgt Tara Grogan, knocked on my office door. I answered the door; Capt Duggan introduced himself as Jag. Capt Duggan demanded that I attend a meetin with my supervisor, Lt Col Yvonne Sculley. I immediately asked for a representative. Capt Duggan stated, I did not need a representative. Capt Duggan was very aggressive towards me. In a threatening tone, Capt Duggan demanded I, "get up and come with him now or be faced with disciplinary action for disobeying a task from your supervisor. " I replied, "I am not disobeying a task from my supervisor; I just want to have Union representative present." Capt Duggan denied my request. I asked to go the bathroom before the meeting. Capt Duggan followed me to the bathroom. I asked Capt Duggan to stop following me, Capt Duggan stated, I am not following you. I responded, "Yes you are, you are harassing me." I asked Capt Duggan to stop harassing me, and he continued. Capt Duggan continued walking closely behind me with his hands behind his back. The First Shirt was following me as well. After using the bathroom, Capt Duggan wanted me to come to the conference room. Capt Duggan had a paralegal waiting on me. After introducing the paralegal, he begins to discuss my HIPPA information with an opened door. I asked for him to close the door, Capt Duggan refused and continued the meeting. I informed Capt Duggan that he was violating my privacy rights. Capt Duggan stated, "no one can hear me." Capt Duggan denied my request for privacy, so I left the conference room. Capt Duggan jumped up from the table, and followed me, yelling at me "come back here or I will have you removed from the building." I kept walking to my office, frantically dialing my Union representative, Mr. Nash. I left a voice mail that I need representation. I also called Security Forces because Capt Duggan would not stop harassing and threatening me.

//Signed//

Jennifer D. Hicks

I am submitting this charge against the agency as part of a previous ULP filed on behalf of Mrs. Jenifer Hicks. The charge alleges a violation of 5 USC 7116(a)(1)(4)(5)(7) and (8). On 27 November 2012, Capt Ian Duggan, Tyndall AFB JAG, and MSgt Tara Grogan, 325 MED GP First Sergeant, entered Mrs. Hicks' office and demanded that she attend a meeting with Lt Col Yvonne Scully, supervisor of Mrs. Hicks, in a conference room. She was denied representation upon request and harassed and threatened by Capt Duggan. Attached is Mrs. Hicks' full statement on the incident. I request that this charge be added to the current case number AT-CA-13-0116.

DAVID D. NASH, President
AFGE Local 1113

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
South Tower – Suite 1950
225 Peachtree Street
Atlanta, GA 30303
(404) 331-5300 FAX: (404) 331-5280

January 25, 2013

AFLOA/LLFSC
Attn: Major Jeremiah Crowley
HQ AFLOA/JACL (LFSC)
1500 West Perimeter Rd., 1st Floor, Suite 1370
Joint Base Andrews, MD 20762

David Nash, President
American Federation of Government
Employees, Local 1113
P.O. box 40116
Tyndall AFB, FL 32403-0116

Re: U. S. Department of the Air Force
325th Fighter Wing
and
American Federation of Government
Employees, Local 1113
Tyndall AFB, Florida
Case No. AT-CA-13-0188

Dear Major Crowley and Mr. Nash:

I have enclosed a copy of the unfair labor practice charge which the Charging Party filed with my Office. I have assigned the case number shown above to this charge. It is important that you cooperate fully during the investigation of the charge so my office can timely complete the investigation and make a decision. The Agent who has been assigned to investigate the charge will contact you as soon as possible. If you have any questions, please contact the Agent using the phone number or e-mail address at the end of this letter.

For the Charging Party:

If you are the party who filed the charge and have not already done so, please submit the following, so my office **receives** it by **February 4, 2013:**

1. A list of witnesses – names, positions, day and evening telephone numbers, and a summary of their expected testimony about their personal knowledge of the charge.

2. Copies of all relevant documents, with an Index if the submission is lengthy.

Section 2423.4(e) of the FLRA's Regulations requires you to provide this evidence/information. If you did not submit any evidence or information when you filed the charge, and do not provide this information by **February 4, 2013**, I may dismiss the charge for lack of cooperation. You are responsible for confirming that my office has received all supporting evidence and information. You also must respond to the Agent's attempts to communicate with you during the investigation.

For the Charged Party:

If you are the party against whom this charge is filed, please review the allegations in the charge and submit a written position to my office. You are expected to cooperate fully in the investigation, and the Agent may ask you for documents or a list of witnesses.

For Both Parties:

To assist you in understanding how we process an unfair labor practice charge, I have enclosed an information sheet describing what happens during and after an investigation.
If someone other than you will be representing your party in this case, please complete the enclosed "Notice of Designation of Representative."

The General Counsel encourages parties to informally resolve unfair labor practice charges, and the assigned Agent is available to assist the parties in resolving this matter. I have enclosed a question and answer sheet that gives information about the General Counsel's dispute resolution services.

Sincerely,

Richard S. Jones
Regional Director

Assigned Agent: Patricia J. Kush
404/331-5300 Ext. 5016
pkush@flra.gov

Enclosed: Notice of Designation of Representative

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

NOTICE OF DESIGNATION OF REPRESENTATIVE

Case No. 02-CA-13-0188

TO: Regional Director
Atlanta Regional Office
Federal Labor Relations Authority
SouthTower, Suite 1950
225 Peachtree Street
Atlanta, GA 30303

I, the undersigned party, hereby designate as my representative in this proceeding, the person whose name and address appears below. Said representative is to be served copies of all formal documents and written communications in this proceeding, excepting subpoenas. This designation shall remain valid until a written revocation is filed by me.

Signature of party (please sign in ink)	*Representative's name, address, zip code (print or type)*
Title	
	Area Code / *Telephone Number*

FLRA Form 75
Rev 3-80

PJK

ULP D A ENTRY (revised February 20

325th Fighter Wing Tyndall AFB

CASE NUMBER: AT-CA-13-0188 DATE FILED: 1/14/13

PROFESSIONAL ASSIGNED:(Code P1) PJK DATE: 1-16-13

PROFESSIONAL REASSIGNED: (Code P2) DATE:

PROFESSIONAL CO-ASSIGNED: (Code P3) DATE:

OPENING LETTER ISSUED: (Code O1)

INITIAL ISSUE CODE: A1.01

DISPOSITIVE ISSUE CODE: A1.2.12

DESCRIPTION (AN ENTRY MUST NOW BE MADE IN THIS BLOCK)

____ *Exec. Order; Labor Relations forum activities or section 7106(b)(1)*
____ *Raises novel or interesting issue*
____ *Involves potentially sensitive issue*
____ *Concerns an issue of nationwide impact that may cross Regional Office geographic or jurisdictional boundaries*
____ *Injunction requested by Charging Party*
✓ Not Applicable

COMMENTS: (e.g., Related Case Number or any other information region would like to add)

KEY WORD CODES: (INSERT APPLICABLE CODE NUMBER IN FOLLOWING ACTION TABLE)

Example: Withdrawal Solicitation was After RD Determination; record A2" for Withdrawal Solicitation

Withdrawal Solicitation
1a) Prior to RD determination w/supervisory approval
1b) Prior to RD determination w/o supervisory approval
2) After RD determination
3) Unsolicited withdrawal

Cooperation (by charged party)
1) Full cooperation with affidavits and witnesses
2) Agent talked to witnesses - no affidavits
3) Submission of documentary evidence
4) Submission of statement of position
5)Agent talked to charged party representative
6)Cooperation not required

Method
1) On-site affidavits and evidence
2) Telephone affidavits
3) Sworn questionnaire
4) Confirming letters
5) Unsworn questionnaire
6) On-site conversation
7) Telephone/E-mail conversation

Scope
1) Dispositive action without the taking of formal evidence
2) Dispositive action prior to completion of full investigation
3) Dispositive action after full investigation

Remedy
1) Backpay - dollar amount
2) Make whole - dollar amount
3) Status quo ante (bargaining)
4) retroactive bargaining
5) recission of action (non-bargaining)
6) other traditional remedy - FLRA posting, cease & desist order, prospective order (cases involving formal discussion, Weingarten, dues withholding, (a)(1) statement, prospective bargaining)
7) novel remedy (i.e, supervisory training)
8) other

Prosecutorial discretion
1) Yes
2) No

Full dismissal

2, 3, 2, 3, 2

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
225 PEACHTREE STREET N.E., SUITE 1950, ATLANTA, GA 30303
(404) 331-5300 FAX: (404) 331-5280

April 17, 2013

David Nash, President
AFGE Local 1113
P.O. Box 40116
Tyndall AFB, FL 32403

Re: U.S. Department of the Air Force
325th Fighter Wing
and
American Federation of Government Employees,
Local 1113
Tyndall AFB, Florida
Case No. AT-CA-13-0188

Dear Mr. Nash:

The FLRA Atlanta Region investigated your charge alleging that the Department of the Air Force, 325th Fighter Wing, Tyndall AFB, Florida (the Agency) violated the Federal Service Labor-Management Relations Statute (the Statute) when it harassed a bargaining unit employee and denied her union representation during a November 27, 2012 meeting. As to your allegation related to union representation, section 7114(a)(2)(B) of the Statute (referred to as an employee's *Weingarten* right) states that an employee has the right to be represented by the union if: (1) The agency is conducting an examination in connection with an investigation; (2) The employee reasonably believes the examination may result in disciplinary action; and (3) The employee requests union representation.[1] As to your harassment allegation, an agency violates section 7116(a)(2) and/or (a)(4) of the Statute if it discriminates against an employee for engaging in protected activity.[2] Because the November 8 meeting was not an examination and there is insufficient evidence of discrimination, I am not issuing a complaint.

The investigation revealed that in November 2012, bargaining unit employee Jennifer Hicks requested six months off of work due to health issues. After Human Resources advised Hicks of her FMLA rights, she attempted to invoke them. Hicks did not seek the Union's assistance when asking for FMLA leave.

Hicks's supervisor did not inform her whether the FMLA leave had been approved, so Hicks came to work on November 27. Hicks informed her supervisor that she was at work because

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[1] *Am. Fed'n of Gov't Employees, Local 1941 v. FLRA*, 837 F.2d 495, 498 (D.C. Cir. 1988); *Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan Air Force Base, Cal.*, 29 FLRA 594, 602 (1987).
[2] *Letterkenny Army Depot*, 35 FLRA 113, 118 (1990).

the supervisor hadn't approved her FMLA leave. Around 1:00 p.m. that afternoon, Captain Ian Duggan, who is a JAG Officer, knocked on Hicks's door. Duggan was with Master Sergeant Tara Grogan, who is part of the 325th Medical Group and Hicks's chain-of-command. Since Grogan is usually involved in employee discipline, Hicks immediately feared discipline. Duggan demanded that Hicks come to a meeting with her supervisor about her FMLA leave.

Hicks asked for a Union representative. Duggan said she didn't need one. After Hicks insisted she did, Duggan told Hicks she couldn't make any phone calls, and in a threatening tone, he demanded that Hicks "Get up and come with me now or be faced with disciplinary action for disobeying a task from your supervisor." Hicks replied that she wasn't disobeying a task from her supervisor, that she just wanted a Union representative. Duggan again denied the request.

Hicks asked to go to the bathroom before the meeting. Hicks proceeded down the hall, and Duggan followed her closely with his hands behind his back. Grogan also followed. Hicks asked Duggan to stop harassing and following her. Duggan said he was just following close behind her. Hicks told him she deserved privacy to go to the bathroom without being followed. Duggan and Grogan waited outside the bathroom while Hicks used the restroom.

After using the restroom, Duggan and Hicks went to a conference room. Duggan began discussing Hicks's FMLA request with her. He read from emails about Hicks's request. Hicks was concerned about a potential HIPPA violation since the door to the room was open. Hicks asked Duggan to close the door since he was discussing her medical information. Duggan refused and continued the meeting, stating he preferred to keep the door open. Hicks said she wanted him to close the door because he was violating her privacy rights. Duggan said "You don't have any rights, no one can hear me." Hicks insisted she did have rights. She said if he wasn't going to close the door, she was not going to remain in the meeting. Duggan refused to close the door.

At that point, Hicks got up and walked out of the room. Duggan jumped up and followed her back to her office. He said in a loud manner, "Come back here or I will have you removed from the building." Hicks kept walking to her office, frantically dialing your phone number. Duggan yelled at Hicks to hang up the phone. Hicks didn't hang up and left you a message. After that, she contacted her EEO representative and told him she was being threatened. The EEO representative advised Hicks to call Security Forces. When Hicks called Security Forces and explained the situation, Hicks was advised to stay on the phone until officers arrived.

Security Forces said it wasn't going to press charges because this was just a verbal dispute, but Hicks could come to the station and write out a statement. In Hicks's statement, she indicated that when she requested a Union representative, Duggan told her she didn't have the right to a representative because he wasn't going to ask her any questions.

In this case, Hicks did not have a *Weingarten* right to Union representation during the November 27 meeting because the Agency was not conducting an examination. The Agency

contends Duggan was meeting with Hicks to discuss her FMLA rights with her and had no intention of disciplining her. This position is supported by Hicks's statement to Security Forces and by the information uncovered during the investigation, which did not reveal any specific questions Duggan asked Hicks. The Agency didn't have any other reason to invite the Union to the meeting since Hicks had not sought Union assistance in regard to her FMLA request.

Also, there is insufficient evidence of discrimination. Although Hicks engaged in protected activity by asking for a Union representative, there is insufficient evidence that Duggan's treatment of Hicks was because of that protected activity.[3] Duggan did not make any remarks that would indicate the reason he followed her to the bathroom and spoke to her in the manner he did was because he was upset about Hicks requesting a Union representative.

If you want to file an appeal of this action you may do so with the General Counsel of the FLRA at the following address:

Federal Labor Relations Authority
Office of the General Counsel (Attn: Appeals)
1400 K St., N.W., Second Floor
Washington, D.C. 20424-0001

Fax No. 202-482-6608

You have a deadline to file an appeal and must file your appeal no later than **April 20, 2013**. This means that if you mail your appeal, you must postmark it by **April 20, 2013.** If you deliver or fax your appeal you must also do that by the same date. Please send a copy of your appeal to my office here in Atlanta.

If you need more time to prepare your appeal, you may ask for an extension. If you ask for an extension, you must do so in a letter you send so that the office at the above address gets it no later than **April 15, 2013**.

You may also file an appeal, or a request for extension of time to appeal, by e-mail, to ogc.appeals@flra.gov. Please put the case number in the subject line of your e-mail message.

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[3] *Letterkenny Army Depot,* 35 FLRA 113, 118 (1990) (to prove discrimination under section 7116(a)(2) or (a)(4), evidence must show employee engaged in protected activity, and protected activity was a motivating factor in the agency's treatment of the employee concerning conditions of employment).

If you want to know how the General Counsel decides whether or not to grant an appeal, please review section 2423.11(e) of the Authority's Regulations on the Authority's web site: http://www.fira.gov/OGC_Appeals.

Sincerely,

Richard S. Jones
Regional Director

Enclosure

cc:

Major Daniel J. Watson
AFLOA/LLFSC Eglin Region
210 N. First St. (Bldg. 214)
Eglin AFB, FL 32542-5487

Julia Akins Clark, General Counsel
Federal Labor Relations Authority
1400 K Street NW, 2nd Floor
Washington, DC 20424-0001